SUPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~5850~~ 70-5021

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR,

Appellants,

v.

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIEL, Director, Cook County Department of Public Aid,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BRIEF FOR APPELLANTS

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BRIEF FOR APPELLANTS

OPINIONS BELOW

The memorandum opinion [A. 39] of the single judge court below denying the defendants-appellees' motions to dismiss, granting intervening plaintiffs-appellants' motion to intervene, and granting appellants' motions to convene a three-judge court is officially reported at 314 F. Supp. 1078

(1969). The opinion of the three-judge district court [A. 83] denying all plaintiffs' motions for summary judgment, granting appellees' motions for summary judgment, and dismissing the complaints is officially reported at 314 F. Supp. 1082 (1970). The order denying plaintiffs' motions to vacate the judgement and for reconsideration [A. 103] is unreported.

JURISDICTION

This is a direct appeal to this court pursuant to 28 U.S.C. Sections 1253 and 2101(b) from the final decision of the three-judge court of the United States District Court for the Northern District of Illinois, Eastern Division, which was convened in compliance with 28 U.S.C. §§ 2281 and 2284.

The court below had jurisdiction pursuant to 28 U.S.C. § 1343(3), 28 U.S.C. § 2201, and 42 U.S.C. § 1983, to grant the requested injunctive relief and to declare invalid an Illinois Public Aid Code statute and a statewide regulation of the Illinois Department of Public Aid (IDPA). The original complaint, Civ. No. 68 C 3124, was filed November 8, 1968. Plaintiffs Georgia Townsend and her daughter Omega Minor moved to intervene in this cause on January 23, 1969.

The single judge court on March 28, 1969, found that plaintiffs had stated a cause of action under 42 U.S.C. §1983, which raised substantial constitutional questions requiring the convening of a three-judge court. The motion to intervene was allowed.

The cases were heard by a three-judge panel on November 29, 1969, on the complaint, intervening complaint, answers and motions for summary judgment. On April 30, 1970, the three-judge court rendered its judgment. It reaffirmed that plaintiffs' complaints stated a cause of action under 42 U.S.C. §1983, found that the suit was properly maintained as a class action in accordance with Rule 23, Federal Rules of Civil Procedure, and found that the named plaintiffs had standing to maintain the action on behalf of the class. Sum-

mary judgment was granted for the defendants in both cases and the complaints were dismissed.

Plaintiffs and intervening plaintiffs filed separate motions to vacate the judgment and reconsider the cause on May 11, 1970. Their motions were denied by the three-judge court on June 12, 1970. Separate notices of appeal to this court were filed on July 14, 1970. The jurisdictional statement of intervening appellants was filed on September 12, 1970.

On February 22, 1971, the Supreme Court granted the motions to proceed in forma pauperis, and noted probable jurisdiction. 39 U.S.L.W. 3359 (No. 5850 and 6000, Feb. 22, 1971).

QUESTIONS PRESENTED

Plaintiffs are needy dependent children and their mothers (or other responsible relative) who are in all respects eligible to receive Aid to Families with Dependent Children (AFDC) public assistance payments under §§ 401 *et seq.* of the Social Security Act, 42 U.S.C. §§ 601 *et seq.*[1] except for the fact that the child or children attend a college or university instead of a technical or vocational training school.[2] The child who is a college or university student, whether taking an academic or vocational course, is cut off the Illinois welfare rolls at age 18 in spite of the fact that he or she is made eligible to age 21 by federal law, and no aid is available to that child for his or her subsistence needs. This termination of benefits denies the needy children sufficient means with which to meet basic needs and exposes them to extreme hardship and privation if they are to pursue their education at a college or university. Under these circumstances:

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[1] Section numbers will hereafter be referred to in the Social Security Act and not in the United States Code.

[2] Defendant Swank has estimated that 1,000 Illinois children might take advantage of the benefits sought herein at a cost of $1,000,000 divided approximately equally between the federal and state governments.

(1) Does the guarantee of the equal protection of the laws prohibit Illinois from discriminating between classes of equally needy children by denying AFDC welfare assistance to that class of needy children who attend a college or university in pursuit of their education, while granting that assistance to children who attend a technical or vocational school?

(2) Does the guarantee of the equal protection of the laws prohibit Illinois from discriminating between schools at which vocational or technical training is offered, for the purpose of a needy child's eligibility for federal welfare assistance, by denying AFDC to a child pursuing a technical or vocational course of study at a public junior college or university while granting that assistance to a child pursuing the same course of study at a private vocational or technical school?

(3) Do the requirements of due process of law prohibit Illinois from denying AFDC benefits to a needy child pursuing a course of vocational or technical training at a junior college, college or university while granting AFDC benefits to a child pursuing the same course of study at a private vocational or technical school?

(4) Does the Illinois statute, 23 Ill. Rev. Stat. § 4-1.1 (1969), and the Illinois Department of Public Aid Categorical Assistance Manual Regulation §150, which exclude from receipt of AFDC benefits children made eligible by Congress, conflict with federal law and policy which guarantee basic subsistence to age 21 to these children while pursuing their education; and are they invalid because this statute and regulation define dependent children in a manner inconsistent with the Social Security Act and regulations of the Department of Health, Education and Welfare?

STATUTES AND REGULATIONS INVOLVED

The rights asserted herein arise under Title IV of the Social Security Act of 1935 as amended, 42 U.S.C. Section 601, *et seq.*, under regulations promulgated by the Secretary of Health, Education and Welfare (HEW), and under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The relevant sections of the Act, §§ 401, 402(a)(8), 402(a)(10), 402(a)(15), 402(a)(19), and 406(a), are set forth as Appendix A, *infra* at App. 1a-8a. The following regulations from Part IV of the HEW *Handbook of Public Assistance Administration* (hereinafter HEW Handbook) are set forth in Appendix B, *infra* at App. 9a-18a: Sections G-3200, G-3210, G-3220, G-3240, 3401, 4200, 4210, 4220, 4221, 4222, 4223, 4223.1, 4223.2, and 4223.3.

The state statute drawn in question is Illinois Public Aid Code Section 4-1.1 which is set forth in Appendix C, *infra* at App. 19a. Statewide administrative regulations of the Illinois Department of Public Aid are set forth in Appendix D, *infra* at App. 20a-21a.

STATEMENT

The suit was brought to declare invalid and enjoin the operation of an Illinois statute and regulation of statewide application excluding from Aid to Families with Dependent Children (AFDC) benefits children made eligible by the federal Social Security Act. Eighteen to twenty-one year old students in attendance at a college or university and otherwise eligible for AFDC benefits are denied such benefits by the state statute and regulation while other students, similarly situated in terms of age, need, and dependency, but in attendance at a high school, vocational, or technical training school are granted these benefits. A permanent injunction was sought to restrain defendants, the State and Cook County Directors of Public Aid, from failing or refusing to make AFDC payments in reliance on the statute and regulation.

Georgia Townsend is the sole support of Omega Minor, her only child. Omega's paternity has never been established and she receives no support from any putative father. Mrs. Townsend is herself a disabled individual and has no income, resources, support, or maintenance other than public assistance disability payments from the Illinois and Cook County Departments of Public Aid as administered by the defendants. Mrs. Townsend received an AFDC grant on behalf of herself and on behalf of her dependent daughter, Omega, from December, 1953, to April, 1960. From April, 1963 to January, 1967, Mrs. Townsend received an Aid to the Disabled[3] grant from the same defendants for herself and an AFDC grant for Omega. The disability grant was based on Mrs. Townsend's disability due to a disease known as systemic lupus erythematosis.[4]

Omega attended the public schools in Chicago and in August, 1966, graduated with honors from Chicago's DuSable High School. While in high school she was an honor student, valedictorian of her class, and editor of the high school newspaper. She planned to continue her education in college. In September, 1966, Omega enrolled as a full-time student at Southeast Junior College[5] in Chicago, Illinois, and undertook a course of study which would lead to the

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[3] Aid to the Disabled is another categorical assistance program under §1151 *et seq.* of the Social Security Act, 42 U.S.C. §1351.

[4] Systemic lupus erythematosis is a form of arthritis affecting all body tissues. There is no cure. Loeb, *Textbook of Medicine* (1967).

[5] Southeast Junior College is one of the 8 tuition free (to city residents) junior colleges of the Chicago Junior College District No. 508, created pursuant to 110 Ill. Rev. Stat., §§ 13-12 through 13-19.10 (1969). The Chicago Junior Colleges are accredited by the North-Central Association of Colleges and Secondary Schools. A wide range of technical, vocational and academic courses of study are offered.

vocation of elementary school teacher and Illinois certification for that position.[6]

In December, 1966, Mrs. Townsend was advised by defendant welfare officials of the Cook County Department of Public Aid that Omega's AFDC grant in the monthly amount of $87.94 was cancelled effective January, 1967, for the stated reason that Omega had become eighteen years of age and was not in attendance at a high school, vocational, or technical training school. At the time, the family's combined monthly disability and AFDC grants amounted to $171.19. In January, 1967, the Aid to the Disabled grant was issued to Mrs. Townsend in the amount of $123.25 and took account only of the needs of Mrs. Townsend. A monthly General Assistance grant of $34.54 was issued to Omega from January, 1967, to May, 1967, then the grant was cancelled. The family has existed since June, 1967, solely on Mrs. Townsend's Aid to the Disabled grant. Reducing the family's income to $123.25 resulted in a 28 per cent net reduction in the family's income. Nevertheless, Omega continued to pursue her studies at Southeast Junior College.

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[6]The various requirements for certification as a public school teacher are set out in Article 21 of the Illinois School Code, 122 Ill. Rev. Stat. § 21-1 *et seq.* (1969). The specific requirements for an elementary certificate are contained in § 21-3:

> § 21-3 Elementary Certificate
>
> An elementary school certificate shall be valid for 4 years for teaching in the kindergarten and lower 9 grades of the common schools. It shall be issued to persons who have graduated from a recognized institution of higher learning with a bachelor's degree and with not fewer than 120 semester hours and with a minimum of 16 semester hours in professional education, including 5 semester hours in student teaching under competent and close supervision. The academic and professional courses offered as a basis of the elementary school certificate shall be courses approved by Superintendent of Public Instruction in consultation with the State Teacher Certification Board. 1961, March 18, Laws 1961, p. 31, § 21-3.

The three-judge court below held that denying AFDC benefits to Omega Minor and this class of needy dependent children was rational. It found that the education of needy dependent children is not so central and overriding a purpose of the Social Security Act as to require Illinois to follow the federal definition of dependent children [A. 91]. As to the equal protection claims, the court upheld the state's contention that the purpose of the state statute to aid the intellectually inferior needy children rather than the intellectually superior needy children, such as intervening plaintiff, to become employable, and the purpose of ensuring fiscal integrity of state welfare programs, were legitimate state interests providing a rational connection between the legislative objectives and the classifications contained in the statute [A. 93]. The court did not discuss intervening appellants' due process claim.

In June 1970, Omega completed her work at Southeast Junior College. She transferred to Chicago State College (formerly Chicago Teachers' College) and commenced her further teacher's preparation there in September, 1970. She still is in attendance there and anticipates graduating in June, 1972. She and her mother are still existing solely on her mother's Aid to the Disabled.[7]

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[7]Mrs. Townsend's monthly Aid to the Disabled grant is composed of the following items and amounts:

ITEM		*AMOUNT*
Rent (Chicago Housing Authority)		$ 70.00
Laundry Allowance		1.25
Transportation to medical source (Fantus Clinic, Cook County Hospital)		17.40
Medical Diet		9.62
Phone		4.61
Personal Allowance		
Food	$26.56	
Clothing	6.38	
Household supplies	1.60	
Personal essentials	8.38	
	$42.92	42.92
		$145.80

SUMMARY

The equal protection and due process clauses of the Fourteenth Amendment and the Social Security Act and regulations of the Department of Health, Education and Welfare invalidate an Illinois statute and regulation which arbitrarily, irrationally and in contravention of the purposes and requirements of the Act and regulations deny AFDC benefits to needy dependent children between 18 and 21 attending a college or university while granting benefits to needy dependent children between 18 and 21 attending a vocational or technical school. *See Shapiro v. Thompson*, 394 U.S. 618 (1969); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *King v. Smith*, 392 U.S. 309 (1968); *Rosado v. Wyman*, 397 U.S. 397 (1970); *Dandridge v. Williams*, 397 U.S. 471 (1970); *California Department of Human Resources Development v. Java*, 39 U.S.L.W. 4491 (U.S. Apr. 26, 1971).

I. The federal AFDC program has a comprehensive scheme of education, work training, and employment to get recipients permanently out of poverty and dependency, but the state statute and regulation absolutely disqualifies

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Dividing Mrs. Townsend's food allowance between the two result in an approximate expenditure of $.15 per meal per person.

The family's income would have been augmented by $98.18 per month if an AFDC allowance were included for Omega.

Laundry		$ 1.25
Personal Allowance		
Food	$32.00	
Clothing	9.78	
Household Supplies	1.60	
Personal Essentials	5.45	
	$48.83	48.83
Educational Allowance		
Transportation	$24.20	
Lunches	9.90	
School Activities	15.00	
	$49.10	49.10
		$ 98.18

many eligible children from benefits needed for subsistence while attending the schools, colleges, and universities which will enable them to get permanently off the welfare rolls and on to the tax rolls.

Repugnant to the equal protection clause is the rationale that denying them AFDC makes them more and sooner employable. This rationale is one rejected by this Court in *Shapiro v. Thompson*, 394 U.S. 618, 637-638 (1969), as being without a rational basis or compelling state interest. The discrimination against children attending college is not justified by employment possibilities. Vocational education does not make them more employable. Special Labor Force Report No. 96, *Jobless Trends of 20 Large Metropolitan Areas*, 16-20 (1968) (U.S. Dept. of Labor, Bureau of Labor Statistics, Reprint No. 2567). Neither is exclusion of college children justified as a reasonable need-determining regulation. Congress has mandated that all student earned income must be disregarded in determining need. Section 402(a)(8)(A)(i). A state purpose to aid the intellectually inferior child with vocational training is unsupported by the record and contrary to defendants' own regulations and other state statutes declaring equal access to education opportunities for all children a paramount state goal. A Congressional determination that equal protection requires furnishing aid to college as well as vocational school children and is necessary as means of solving national problems supersedes the judgment of the State. *See Katzenbach v. Morgan*, 384 U.S. 641 (1966). The principle of *Dandridge v. Williams*, 397 U.S. 471, 481 (1970), that some AFDC must be furnished to all eligible individuals and families is applicable here. Illinois' underinclusive classification cannot be justified as a reasonable allocation of AFDC by absolutely denying benefits to a statutorily entitled class. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); *Dandridge v. Williams*, 397 U.S. 471, 481, 484 (1970); *King v. Smith*, 392 U.S. 309, 326 (1968).

The statute is not related to fiscal integrity as a child may give up attendance at college and attend a vocational

school. Saving welfare funds cannot justify an otherwise invidious classification. *Shapiro v. Thompson,* 394 U.S. 618, 633 (1969). Restricting educational and employment opportunities of poor children and coercing them into manual jobs is constitutionally impermissible. *Hobson v. Hanson,* 269 F. Supp. 401 (D. D.C. 1967), *aff'd sub nom. Smuck v. Hobson,* 408 F.2d 175 (D.C. Cir. 1969).

The interests of these dependent children require equal protection to assure access to state-created educational institutions. *Brown v. Board of Education,* 347 U.S. 483 493 (1954).

The less onerous alternatives of percentage reducations or maximum grants are available to conserve welfare funds. *Rosado v. Wyman,* 397 U.S. 397, 413 (1970); *Dandridge v. Williams,* 397 U.S. 471, 479-480 (1970).

II. The facts that Illinois and the federal government in 1970 paid $6,415,917 to Illinois public junior colleges to provide vocational and technical training and that Illinois denies AFDC to a welfare child taking vocational or technical training at a junior college establish the patent irrationality and violation of equal protection by a classification which totally excludes junior colleges, colleges and universities as appropriate schools for pursuit of this training. There is no rational basis for or compelling state interest requiring disqualifying children pursuing needed vocational training in these schools and such an invidious distinction cannot be justified on grounds of saving welfare expenditures. *Shapiro v. Thompson,* 394 U.S. 618, 631-633 (1969).

III. The statute and regulation that will provide AFDC and tuition to a welfare child attending a private vocational or technical school but deny these benefits to the same child if he attends a public vocational or technical school if it is labelled a college is so arbitrary and irrational as to violate due process. *See Chastleton Corp. v. Sinclair,* 264 U.S. 543 (1924). Under the Illinois statutes and regulations the determination of an acceptable vocational or technical

school for AFDC purposes is so insurmountable as to violate the due process guarantee that what is in and out of a statute must be reasonably ascertainable. *Bagget v. Bullitt*, 377 U.S. 360, 367 (1964).

IV. In a series of recent cases this Court has struck down state statutes and regulations which conflict with the requirements of the Social Security Act to furnish assistance with reasonable promptness or when due, and which conflict with federally prescribed methods of dealing with welfare problems. *See, e.g., King v. Smith*, 392 U.S. 309, 326-327, 333 (1968); *Lewis v. Martin*, 397 U.S. 552, 559 (1970); *California Department of Human Resources Development v. Java*, 39 U.S.L.W. 4491, 4494-95 (U.S. Apr. 26, 1971). Illinois is precluded from excluding those persons made eligible by Congress as it unduly limits the welfare rolls and channels matching federal grants in a manner not intended by Congress. *King v. Smith*, 392 U.S. 309, 313, 333 n. 34 (1968); *Rosado v. Wyman*, 397 U.S. 397, 421 (1970); *California Dept. of Human Resources Development v. Java*, 39 U.S.L.W. 4491, 4495 (U.S. Apr. 26, 1971). Illinois by participating in the AFDC program is required to comply with the federal standards. The Solicitor General as amicus curiae in *Swank v. Rodriguez*, No. 1269, Oct. Term, 1970 (Brief of the United States at 9) found Illinois had freely chosen to comply with federal standards.

A. The principles underlying statutory interpretation require that the plain meaning of a statute be followed unless it leads to absurd or unreasonable results. *United States v. American Trucking Association*, 310 U.S. 534, 543 (1940). Section 406(a) of the Act plainly makes needy dependent children attending a college eligible for AFDC and contains no language granting discretion or an option to Illinois to limit AFDC to less than all those defined in federal statute. The legal standard for the states is the Act, otherwise the limitations a state might impose and still collect federal money cannot reasonably be ascertained. This is not a maximum grant situation as upheld in *Dandridge v. Williams*, 397 U.S. 471 (1970), but a situation where no

aid is being furnished to an eligible individual. Applicable here is the principle established in *Rosado v. Wyman,* 397 U.S. 397 (1970), that a state cannot avoid the political consequences of a cutback in AFDC benefits for those on the rolls by the device of totally excluding a class of recipients.

B. HEW regulations specify that college children are eligible for AFDC and that the choice of what type of school to attend is to be left to the child and his family. HEW Handbook, Pt. IV, § G-3220 (1965). HEW regulations make education of dependent children a major program emphasis, while others determine that self-support by dependent children is not a major emphasis. HEW has not been able to secure compliance with the Act and its own regulations. However the regulations are not deprived of their validity. HEW's fears that a state will withdraw from the AFDC program does not justify the political expediency of giving federal funds to an invalid state program. *Cooper v. Aaron,* 358 U.S. 1 (1958). The doctrines of acquiescence and re-enactment are not applicable as they apply to regulations and formal interpretations given to legislative enactments. The inconsistency between HEW's regulations and its actual practice preclude the application of the doctrine. *King v. Smith,* 392 U.S. 309, 313 n.6, 333 n.34 (1968); *Koshland v. Helvering,* 298 U.S. 441 (1936); Davis, *Administrative Law,* § 5.06-.10.

C. The legislative history of the definition of "dependent child" manifests that eligibility has been continually expanded to meet rising educational requirements and opportunities. The Act initially granted aid to all needy dependent children under 16 in a participating state. Subsequent amendments enlarged it to age 18 and in the 1964 and 1965 amendments expanded AFDC to 18 to 21 year old children attending a school, college or university or a course of vocational or technical training. The 1964 amendments extended aid to 18 to 21 year old high school, vocational or technical school students and in 1965, college and university students were added. The 1964 and 1965 amend-

ments must be viewed in a block and in relation to similar OASDI[7a] amendments. A contention that these amendments are optional with a state is unjustified in light of purpose and history of the Act. Even if they were optional, a state would be required to grant AFDC to eligible children attending any school described in the Act, if it opted to extend AFDC past age 18. The congressional determination of a national uniform policy for the solution of a national problem of unemployment of dependent children and adults must be accepted by participating states.

Congress has balanced short term versus long term considerations in requiring the states to expand eligibility. The states must accept Congress' judgment and shaping of the general welfare. *Helvering v. Davis,* 301 U.S. 619, 645 (1937). Congress and this Court have been sensitive to taxing limitations of states and have granted them the power to protect their fisc by allowing them to determine standard of need and level of benefits and, additionally, allowed maximum grants. Section 401, *King v. Smith,* 392 U.S. 309, 318-319 (1968); *Rosado v. Wyman,* 397 U.S. 397, 408, 413 (1970); *Dandridge v. Williams,* 397 U.S. 471, 478, 480-481 (1970).

D. Construing the Social Security Act to further its declared purpose to provide for the security of dependent children requires that all provisions be harmonized. A comprehensive federal scheme of education, work training and employability is apparent. Section 402(a)(8)(A)(i) requires a state to disregard all the earned income of a dependent child who is a full time student as an incentive for children to acquire all the education they can. The Work Incentive Program (WIN), §§ 402(a)(15) and (19) and § 430 *et seq.* provide a program for those children over 16 and not students which will assure that the child will enter the labor force and accept employment. By totally excluding college children and colleges, Illinois is frustrating and retarding an important congressional program. *Woolfolk v. Brown,* 2 CCH Pov. L.Rep. ¶ 13,170 (E.D. Va., Apr. 22, 1971).

[7a] Old Age, Survivors' and Disability Insurance.

ARGUMENT

I.

NEEDY DEPENDENT CHILDREN BETWEEN 18 AND 21 ATTENDING COLLEGE OR A UNIVERSITY ARE DENIED THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE FOURTEENTH AMENDMENT BY THE OPERATION OF ILLINOIS' AFDC CHILD AGE LAW AND REGULATION WHICH GRANT AFDC TO CHILDREN ATTENDING A VOCATIONAL OR TECHNICAL SCHOOL BUT DENY IT TO THOSE ATTENDING A COLLEGE OR UNIVERSITY.

Equal protection of the laws requires that similarly situated persons not be treated differently by a state without adequate justification. Yet, Illinois has treated college and vocational school students differently, without rational basis and certainly without any compelling governmental interests.

The present test for determining whether the equal protection clause is violated is set forth by Mr. Justice Black, speaking for the majority, in *Williams v. Rhodes*, 393 U.S. 23, 30 (1968):

> "[I]nvidious distinctions cannot be enacted without a violation of the Equal Protection Clause. In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.

The Illinois scheme of granting AFDC benefits to technical and vocational school students while denying them to college and university students fails this test.

A. The Facts And Circumstances Of The Law Establish That Illinois Welfare Officials Have Violated The Equal Protection Clause.

It is unnecessary to decide for equal protection purposes whether a state that participates in the AFDC program is required to grant benefits to otherwise needy and dependent children between the ages of 18 and 21 who are students pursuing an education. Once a state has undertaken to participate and to provide such an opportunity, it must be made available to all on equal terms. *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

The court below found the undisputed goal of aiding needy children to become employable is a legitimate state interest and upheld the statute [R. 308].

There is no dispute that the Illinois statute creates two classes of dependent children different in only one regard: the type of training school they attend. One class attends a high school, vocational or technical training school and receives AFDC benefits. The other class attends a college or university and receives no AFDC benefits.[8]

The invidious distinction created between a vocational student and a college student is irrational and arbitrary and places an unreasonable burden and restriction on a welfare family whose child attends a college or university in the pursuit of his education. The effect of the classification is to deter the child from entering college and obtaining an

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[8] In addition, Illinois discriminates under the Act between children in foster homes and those living in the homes of their parent(s) or relatives. Illinois will grant AFDC benefits to a dependent child, defined in § 406(a) and § 408, 42 U.S.C. § 608 (foster care children), who is in attendance at a college or university. What rational basis for granting this aid to a child in a foster home but not to one living in their own or a relatives home is difficult to ascertain. It certainly undermines the mandate to maintain and strengthen family life. See, State of Illinois, Department of Children and Family Services, *Manual on Placement*, Chap. IV, 1-2 (1966).

education, to coerce the child seeking post high school training into low paying and non-academic vocations with high unemployment rates, or, as in the case of Mrs. Townsend and Omega, to impair the health and lower the standard of living to an intolerable level of the parent and her child who, despite the denial of AFDC, seeks a college education.

The defendant welfare officials argued below that this discrimination is not an unjustifiable discrimination [R. 267-272, Memorandum of Defendant Swank in Support of Swank's Answer to Plaintiffs' Motion for Summary Judgment and Swank's Motion for Summary Judgment] because:

> The whole purpose of our statute [Illinois Public Aid Code, 23 Ill. Rev. Stat. §1 *et seq.* (1969)] is to make them [welfare children] employable. The purpose of our statute is not to give them a choice of going to any type of school that they desire or to take any type of courses that they wish at the expense of the taxpayers of the State of Illinois. It is the purpose of Public Aid to try to get the recipients, particularly the young people, employable as soon as possible, so that the taxpayer can be at least partially relieved of the great burden of Public Assistance. [R. 268].[9]

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[9] Appellant welfare families believe that the defendant welfare officials have misconstrued the purpose of the Illinois Public Aid Code. As in the federal law, maintenance and strengthening of family life is the principal consideration. The purposes are stated in 23 Ill. Rev. Stat. § 1-1, (1969), Public Purpose–Aims in Providing Financial Aid and Services:

> SEC. 1-1. PUBLIC PURPOSE–AIMS IN PROVIDING FINANCIAL AID AND SERVICES. The purpose of this Code is to assist in the alleviation and prevention of poverty and thereby to protect and promote the health and welfare of all the people of this State.
>
> To accomplish this purpose, this Code authorizes financial aid and social welfare services for persons in need thereof by reason of unemployment, illness, or other cause depriving them of the means of a livelihood compatible with health and well-being, and provides for the development, use and coordination of all resources in this State, governmental and private.

The discrimination between a vocational school student and a college student is certainly unjustified by the employment possibilities and trends for both types of students. There was no evidence submitted to the court below that vocational education makes a child more employable than college education. Judge Marovitz's reliance on a newspaper article [A. 96] is hardly the evidence upon which a court ought to rely in upholding such an invidious distinction. Data of the United States Department of Labor, Bureau of Labor Statistics reveals that unemployment rates are higher in relatively low-skill and low-paying occupations such as a vocational student might obtain, while white collar jobs traditionally have low rates of unemployment. Special Labor Force Report No. 96, *Jobless Trends on 20 Large Metropolitan Areas*, 16-20 (1968) (U.S. Dept. of Labor, Bureau of Labor Statistics, Reprint No. 2567); see also, Special Labor Force Report No. 122, *Education of Adult Workers: Projections to 1985*, 43-56 (1970) (U.S. Dept. of Labor, Bureau of Labor Statistics, Reprint No. 2685).[10]

> The Illinois Department of Public Aid shall establish such standards of financial aid and services as will encourage and assist applicants and recipients to maintain a livelihood compatible with health and well-being and to develop their self-reliance and realize their capacities for self-care, self-support, and responsible citizenship.
>
> The maintenance and strengthening of the family unit shall be a principal consideration in the administration of this Code. All public aid policies shall be formulated and administered to achieve this end. (Laws 1967, p. 122.)

Further, "[T]he provisions of this Code shall be liberally construed to effect its objects and purposes." 23 Ill. Rev. Stat. § 1-5 (1969) *Construction.* For Illinois' purpose in encouraging the education of its youth, such as Omega, see Ill Rev. Stat. ch. 122, § 30-15.1; ch. 144, § 1301 (1969).

[10]The data reported in this Bureau of Labor Statistics (BLS) Report (No. 122) sustains the finding of the 1964 Senate Report that "[E]ducation beyond the high school level has become almost a necessity in preparing for work." Sen Rep. No. 1513, 88th Cong., 2d Sess. 9 (1964) (see page 77 of Appellants brief, *infra*). The upgrading of the expectations of employers and their effect on children of the poverty cycle was described by the BLS report as follows:

In this case the defendants are discriminating against AFDC children attending college by revoking their benefits upon the child's 18th birthday. This discrimination is obstensibly justified on the grounds that it will make these children more and sooner employable. This rationale has already been rejected by this Court. In *Shapiro v. Thompson*, 394 U.S. 618, 637-638 (1969), one-year waiting period requirements before a new resident of a state could obtain AFDC were invalidated as being repugnant to the guarantee of the equal protection of the laws and the constitutional right to travel. Pennsylvania advanced that its one-year waiting period was "justified as a means of encouraging new residents to join the labor force promptly." This Court rejected this purpose because "A state purpose to encourage employment provides no rational basis for imposing a one-

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> Along with the general upgrading in the educational attainment of white and Negro workers, particularly the young new entrants to the labor force . . . there is a parallel upgrading in the expectations of employers with respect to the educational qualifications of those they seek to employ. Three conditions support a continuation of this parallel rise in demand for and supply of the better-educated workers. First, the supply is ensured by the increasing output of our ever-expanding educational system. Second, the interest of employers in accumulating personnel with the highest possible educational qualifications can be justified on the ground that such personnel are more readily adapted to changing job requirements, are more easily trained in a variety of tasks, and are generally more adaptable to positions of increasing responsibility. Finally, as the attainment of at least a high school diploma becomes more common among job-seekers, potential employers tend to view such attainment as a sign of minimum requisite competence for performing any job. The high school dropout is regarded as lacking not only the formal education of the graduates, but also the basic skills, attitudes, and motivations needed for adequate job performance. The outcome, except under very tight labor market conditions, is a situation in which the job applicant with limited formal education is not given equal consideration for available jobs, quite apart from the actual job requirements themselves.

Special Labor Force. Report No. 122, *Education of Adult Workers: Projections to 1985* 48 (1970).

year waiting period on new residents only." Similarly, Illinois' purpose to "get the recipient, particularly the young people, employable as soon as possible. . ." does not justify the denial of AFDC to only 18 to 21 year old children attending college or university.

The defendant welfare officials also asserted without evidence "that persons enrolled in vocational training programs are intellectually inferior to those in college." [[A. 95-96] Concurring Opinion of Judge Marovitz]. This was the ground for granting aid to high school, technical and vocational school students over the age of 18:

> The reasonableness of this category is patent since persons over the age of 18 who are still in high school are educationally slow, and persons in vocational schools, generally speaking, are not on the intellectual par with other students of the same age and are less able to presently support themselves. However, persons over the age of 18 and enrolled in college are considered able to go to school and contribute to their support. [R. 196-197, Brief of Defendants David L. Daniel and Mae Withers in Opposition to the Plaintiffs' Motion for Summary Judgment.]

Children attending college are not deprived of AFDC support and their income earned is not considered available to meet their needs. Section 402(a)(8)(A)(i) specifically exempts *all* earned income of a student. In addition, defendants' own regulations expose the lack of merit for this rational. The state's regulations *deny aid* to those "intellectually inferior" students who seek post high school education. Section 1017.2 of the IDPA *Categorical Assistance Manual (CAM)* (Appendix D) sets out the criteria for determining whether his plan for vocational training would be approved by the IDPA. In determining this:

> Special consideration is given to the child's desire for further training *provided* that his *ability, aptitudes* and *school performance* warrants such a vocational plan. §1017.2 IDPA-CAM. (Emphasis added).

The state's regulation makes it clear that it has no intention of paying for the training of "intellectually inferior" students.

While the discriminatory regime imposed by the state statute and regulation is gross and otherwise objectionable standing alone, its relevance to the purpose of the AFDC program is to be measured against the congressionally determined purpose of securing dependent children's education, work training and employability through the AFDC program. Any state purpose or law asserted by defendant welfare officials in conflict with the paramount federal law and policy is invalid. In addition, Illinois has already made the choice of compliance with the governing federal standards and purposes, 23 Ill. Rev. Stat. §§ 12-4.5 and 4-1.4. (1969). This is also the view the Solicitor General expressed as amicus curiae in another Illinois welfare case pending before this Court, *Swank v. Rodriguez*, No. 1269, Oct. Term, 1970. (Brief of the United States at 9). *King v. Smith*, 392 U.S. 309, 333 n. 34 (1968). *Woolfolk v. Brown*, 2 CCH Pov. L.Rep., ¶ 13, 170, (E.D. Va., April 22, 1971).

In contradistinction to the avowed purpose of Illinois to get dependent children into any kind of job and off AFDC benefits, are long standing HEW regulations on federal policy (HEW Handbook, § 4223.2 (1962) ("[S]elf-support is not a major program emphasis for the aged or children. . . ."); § 3401 (1946) (education of dependent children is a major program emphasis); and § G-3220 (1965) (the choice of the type of school to attend and course of training is reserved to the child and his parents) and the 1964, 1965 and 1968 Congressional amendments reassessing national welfare and educational interests. These amendments established an updated educational, work training and employment scheme for AFDC children and their responsible relative.

Further, by amending § 406(a) in 1965 to include children attending a college or university, Congress was making a determination that facts existed which constituted a denial of equal protection to children attending these schools. The

Senate Report found a congressional purpose accomplished by "bringing this provision more nearly in line with the provision of the bill relating to the continuation of a child's benefits under the OASDI system." Sen. Rep. No. 404, 89th Cong., 1st Sess., 147 (1965). Such a Congressional determination of the requirements of equal protection supersedes under the Supremacy Clause a contrary state conclusion.[11] *Katzenbach v. Morgan,* 384 U.S. 641 (1966).

Congress has determined that the evil to be remedied is the recurring cycle of poverty and dependency. A prime cause of dependency is the unemployability of both children and their responsible relative in welfare families because of inadequate education or work training. Congress has decided that the most productive, humane and least expensive method of dealing with this problem is to encourage dependent children to secure enough education in the first place so that they won't have to go through the AFDC work training programs. This is surely logical as it is cheaper to have the children attend public supported educational institutions to prepare for their life's work. Welfare families are encouraged to determine the educational goals of their children and encouraged with government AFDC subsidy to obtain as much of that education as they can acquire. Congress realized that this would require the federal and state governments to expend large sums of money, but also realized that there was no other alternative. Sen. Rep. No. 744, 90th Cong., 1st Sess. (1967). See *Helvering v. Davis,* 301 U.S. 619, 645 (1937).

Illinois agrees that the evils to be remedied are poverty and dependency. It has declared a state policy of educating its residents to the fullest extent possible. The Illinois Higher Education Student Assistance Law, 122 Ill. Rev. Stat. § 30-15.1 (1969) declares:

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[11] *Developments in the Law, Equal Protection,* 82 Harv. L.Rev. 1065 (1969).

§ 30-15.1 Purpose

The General Assembly has found and hereby declares that the provision of a higher education for all residents of this State who desire such an education and are properly qualified therefor is important to the welfare and security of this State and Nation, and consequently is an important public purpose; *many qualified students are deterred by financial considerations from completing their education, with a consequent irreparable loss to the State and Nation of talents vital to welfare and security.* The number of qualified persons who desire higher education is increasing rapidly, and the physical facilities, faculties, and staffs of the institutions of higher learning operated by the State will have to be expanded greatly to accommodate such persons, with an attendant sharp increase in the cost of educating such persons. A system of financial assistance of scholarships, grants, and guaranteed loans for qualified residents of college age will enable them to attend qualified institutions of their choice in the State, public or private.
As amended 1967 Aug. 3, Laws, 1967, p. 2644.
(Emphasis added).

To help implement this necessary goal Illinois enacted the Educational Facilities Act, 144 Ill. Rev. Stat. §1301 *et seq.* (1969). The state further declared its purpose as follows:

§1301. DECLARATION OF PURPOSE

It is declared that for the benefit of the people of the State of Illinois, the conduct and increase of their commerce, the protection and enhancement of their welfare, the development of continued prosperity and the improvement of their health and living conditions *it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities and skills;* that to achieve these ends it is

> of the utmost importance that institutions for higher education within the State be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills; and that it is the purpose of this Act to provide a measure of assistance and an alternative method to enable institutions for higher education in the State to provide the needed additional facilities and structures for the public benefit and good, and in execution of the public policy set forth above. (Emphasis added).

The situation in this case indicates that the Illinois Department of Public Aid, as administered by the defendants, finds as a greater evil the spending of money for public assistance. The Illinois statute and regulation used by defendant to deny AFDC to Omega come before this Court with the admitted and avowed primary purpose of reducing expenditures for welfare. It accomplishes this purpose by furnishing AFDC in a grossly under-inclusive manner. It bars AFDC expenditures to eligible children between ages 18 and 21 attending a college or university while expending AFDC money for the same age children attending a vocational or technical school. Illinois is constitutionally prohibited from allocating its AFDC resources *solely* on the basis of denying welfare benefits to a class declared eligible by Congress. *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Dandridge v. Williams*, 397 U.S. 471 (1970); *Shapiro v. Thompson*, 394 U.S. 618 (1969). In *Shapiro*, this Court required the states to

> . . . do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification. *Id.* at 633.

This rationale invalidates Illinois exclusion of college and university children from AFDC.

The lower court [A. 91-93] assumed that a standard different from that applied in *Shapiro* was to be used

in this case because of this court's decision in *Dandridge v. Williams*, 397 U.S. 471 (1970), thus justifying Illinois fencing out college students from AFDC benefits. *Dandridge*, however, did not make anyone ineligible for assistance declared eligible by Congress. It is undisputed in this case now before the Court that the family is receiving no AFDC benefits, and that they have been made eligible by Congress. Further, *Dandridge* did not say a state might make any welfare classification it wished. That case was brought to challenge the allocation of the State's level of benefits, not its eligibility policies. *Dandridge* cannot be considered, nor does it claim, to have overruled *Shapiro v. Thompson*, 394 U.S. 618 (1969).

The facts and circumstances of the laws involved do not justify the gross under-inclusion caused by the Illinois statute and regulation. They are simply too arbitrary. *Rinaldi v. Yeager*, 384 U.S. 305 (1966).

B. The State Interests Asserted In Support Of The Classification Denying Needy College Children Aid Are Not Constitutionally Permissible Or Are Not Compelling Governmental Interests.

The lower court upheld the Illinois statute because the "overall purpose of the enactment is to conserve state funds and to promote governmental economy" and because of the importance of needy children becoming employable [A. 93]. We submit these reasons are constitutionally impermissible or not compelling governmental interests. The statute and regulation are only remotely, if at all, related either to fiscal integrity or to employability because any otherwise eligible child can and does receive equal or greater amounts of state funds by giving up his desire for college or university training and settling for alternative vocational or technical training. In many instances, this alternative would be more expensive to the State; for example, a nursing student in a private hospital setting (vocational school) for three years

would receive more state funds than a two-year junior college student in training as a nurse or for employment in data processing, sales management, or other fields. Or the State's policy may be doubly expensive. A child who is deterred from entering a junior college or college program by the lack of AFDC, and who has no opportunity to attend a private vocational school because there are none in proximity or the cost is prohibitive, may end up on welfare as an adult. He or she would then be eligible to take nurse's training through the AFDC Work Incentive Program (WIN).

This Court has held that conserving State funds by totally excluding a class of eligible families and individuals is not a compelling state interest. Neither is it a rational one in accord with the purpose of the AFDC program. There is no justification for the classification of the type Illinois has employed:

> We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969).

Illinois, by its invidious distinction between vocational and college students, has reduced expenditures for both welfare and public education by denying access to indigent children of needed aid to sustain life, thereby effectively denying these children access to public educational institutions which would enable them to lift themselves out of poverty.

Appellants assert that the underlying intention and the effect of the Illinois statute is to restrict and control the opportunities of these poor and dependent children. Judge Marovitz, concurring in the lower court's decision, suggests that "the skills of manual laborers are in short supply" and that the State may "channel persons into those employ-

ment positions for which society has great need" [A. 96]. The State's arbitrary coercion of this one class of children into "manual" jobs is an unreasonable restriction on the precious freedom of choosing one's life work and the right to pursue education in preparation for it.[12] In sum, arbitrarily channeling welfare children into manual jobs is not a constitutionally permissible objective. *Hobson v. Hansen*, 269 F. Supp. 401 (D. D.C. 1967), *aff'd sub nom Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969).

Omega Minor aspires to be an elementary school teacher in Chicago. In response to HEW guidelines the Chicago Board of Education is integrating its public school faculties. There is a serious shortage of qualified black teachers in all the public schools of Chicago, including those now predominantly white, which are required to have some black teachers. Omega, and many children like her who have

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[12]Plaintiff-appellants maintain that the State should not use its power to deny AFDC benefits so as to coerce the plaintiff class of dependent children, primarily of minority racial and ethnic backgrounds, to engage only in non-academic vocations which command limited wages and are held in lower esteem than many other vocations and professions that require college or university degrees. The State, under Ill. Rev. Stat., ch. 23, § 4-1.1, effectively forces all of these dependent children either to accept "vocational or technical school" training or to forego post-high school training, without consideration of the individual child's aspiration and ability. Judge Marovitz in his concurring opinion [A. 96] agreed with the practical effect of the statute, stating:

> Conversely it may, arguably, be said that there are some persons in college who lack the physical aptitude, coordination, and mechanical ability of vocational students. For instance, a person may be suited by talent and temperament to be an excellent poet or attorney, but not an automobile mechanic or television repairman. In this sense, he could only become economically self-sufficient with a college education, just, as the state contends, another person can only become employable through advanced vocational training.

The practical and political consequences of allowing the state to determine in such an absolute manner the schooling and future employability of its citizens are indeed ominous.

managed to struggle through in spite of the welfare system, are well qualified and are needed to teach and inspire the next generation of children whether black or white.

C. The Interests of Disadvantaged Dependent College Children Must Have Equal Protection Against The Invidious Discrimination Created By The Illinois Statute and Regulation.

This Court has assured that the rights of the poor and disadvantaged in the areas of voting, criminal procedure, association, and other fundamental interests are equal to those of the wealthy. *Griffin v. Illinois*, 351 U.S. 12 (1956); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Carrington v. Rash*, 380 U.S. 89 (1965); *NAACP v. Button*, 371 U.S. 415 (1963); *cf. Brown v. Board of Education*, 347 U.S. 483 (1954). These dependent children not only deserve, but have great need for similar equal access to State-created institutions of education.

The school Omega attends is a public institution, a creature of the laws of the State of Illinois. Illinois and its subdivisions may not deny equal access to these schools by other laws which impose special hardships on certain groups.

Obtaining an education is the primary focus of childhood and youth in our society. It is so important that it is compulsory for many years of a child's life.[13] A person cannot hope to gain entry to and compete in the employment market without the skills which for most of us are only to be obtained through public or private education. Education

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[13] "[V]oting may be an interest that because of its importance, approaches the level of a right, but education is considered so significant that the State has bypassed the establishment of a right and rendered education a duty. It is a duty imposed in the name of preparing citizens for full participation in a society." Coons, Clune and Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 Cal. L.Rev. 307, 368-69 (1969).

is distinguished in character and importance from other services granted by the State and is of unique importance to an individual in a democratic society. Further, the growth of our free enterprise economic system and the social mobility it furthers are dependent upon free exercise of an individual's right to an education. Here elitist concepts have no place. Here the welfare child must be encouraged to maximize and obtain his individual educational capacity in order to break the bonds of privation and prevent future and unnecessary humiliating dependency upon the federal and state governments. Neither the State nor the children have any interest in an educational and employment caste system. Here the interests of the disadvantaged children and the interests of the State merge.

D. Less Onerous Alternatives Would Protect The Interests Of Needy Dependent College Students And The Interests Of The State Of Illinois.

The availability to the State of less onerous alternatives invalidates a law that significantly injures an individual. *Shelton v. Tucker*, 364 U.S. 479 (1960) (first amendment); *NAACP v. Button*, 371 U.S. 415 (1963) (first amendment); *Carrington v. Rash*, 380 U.S. 89 (1965) (voting rights); *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968) (education). Appellants contend that these dependent children cannot be deprived of the opportunity to obtain a college education since there are less onerous alternatives that accomplish the State's purpose of conserving State funds without resorting to the drastic measure of totally excluding these children from AFDC.

A number of alternatives that Illinois could follow to conserve state welfare funds have recently been suggested by this Court. See *Rosado v. Wyman*, 397 U.S. 397 (1970) (allowing reduction of per cent of benefits paid or maximum grants); and *Dandridge v. Williams*, 397 U.S. 471 (1970). *Dandridge* involved a challenge to the "validity of a method

[maximum grant regulation] used by Maryland, in the administration of an "aspect of its public welfare program, to reconcile the demands of its needy citizeens with the finite resources available to meet those demaands." This Court held that a state may either under the SSocial Security Act or the equal protection clause place a limit on the amount of funds in the family grant.[14]

The states are not allowed under any off these cases, however, to define the classes of eligible indivividuals or to discriminate amongst them. "So long as somee aid is provided to *all eligible families* and *all eligible children*, the statute itself is not violated." *Dandridge v. Williams*, 397 U.S. 471, 481 (1970) (emphasis added).

State regulation of the standard of need anod the level of benefits is allowed and that is the alternative t to the federal requirements determining eligible individuals a and the proper allocation of federal funds. Illinois need suffer no damage to its fiscal integrity by making AFDC paymeients to all persons eligible under federal law. Illinois may nmaintain the current level of funds it devotes to the AFDCC program by per cent reduction or maximum grants.

Appellants conclude that the State does noot use and has no need to use the denial of AFDC to present a and potential college and university students for the governmmental purposes it has advanced. Thus, even under the traditioonal equal protection test a classification of dependent childrdren according to whether they are in a college or vocational schhool is irrational

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[14]The Court in *Dandridge* quoted *King v. Smith,h*, 392 U.S. 309, 318-19 (1968):

> There is no question that States have consisiderable latitude in allocating their AFDC resources, since eaeach State is free to set its own standard of need and to detetermine the level of benefits by the amount of funds it devotes es to the program.

This is, of course, subject to the limitations of § 40202(a)(23) as interpreted in *Rosado v. Wyman*, 397 U.S. 397 (1970); anand the limitation in § 401, that aid will be furnished "as far as practicticable under the conditions in such State...."

and unconstitutional. *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969).

II.

NEEDY DEPENDENT CHILDREN PURSUING VOCATIONAL OR TECHNICAL EDUCATION AT A JUNIOR COLLEGE, COLLEGE OR UNIVERSITY ARE DENIED THE EQUAL PROTECTION OF THE LAWS BY ILLINOIS' CHILD AGE LAW AND REGULATION WHICH EXCLUDES THESE SCHOOLS AS APPROPRIATE FOR VOCATIONAL OR TECHNICAL EDUCATION.

Illinois not only classifies needy dependent children in a manner which violates the equal protection clause, but it also classifies the types of schools a child might attend in an irrational and arbitrary manner violative of the equal protection guarantee by blanket exclusion of junior colleges, colleges, and universities as appropriate schools for the pursuit of vocational or technical education by a welfare child.

In 1970, the Illinois State Board of Vocational Education reimbursed junior colleges providing post secondary vocational programs under the Vocational Education Act of 1963, 20 U.S.C. §§ 1241 *et seq.*, and the Illinois Acceptance Act, 122 Ill. Rev. Stat. §§ 94-98, (1969), a total of $6,415,917. These schools receive a base of $7.50 per credit hour of vocational or technical instruction given, with an additional payment of thirty per cent (30%) of the base for children who are classified as "disadvantaged." Annual Descriptive Report of the Division of Vocational and Technical Education of the State of Illinois, 1970. Children from welfare families are effectively precluded from benefitting from very substantial educational opportunities created by this federal-state program by the defendants' refusal to grant sustenance benefits while the child is learning a skilled trade or vocation.

Illinois pays more than $6 million to provide vocational and technical training at junior colleges but disqualifies

a welfare child if he or she takes that training at a junior college. Most publicly-supported colleges and universities offer training in vocations that have counterparts in private specialized technical schools. For example, most universities offer programs in secretarial skills, sales, management, data processing, nursing, medical technology, radio and television, and hotel management. The course descriptions of the Chicago Junior College catalogue, for example, begin with "Air Conditioning" and end with "Transportation."

Because of this nation's heavy investment in low-cost higher education, students can attend publicly-supported colleges and universities at minimal cost. Students on public assistance must take advantage of these colleges and universities because they cannot pay the cost of private training in specialized vocational schools. Most of Illinois' publicly-supported courses of vocational and technical training are available only through junior colleges, which the Illinois Department of Public Aid has specifically excluded in its definition of vocational or technical schools. This permits only the alternative of private vocational or technical schools which are normally beyond the financial means of the dependent child and his parents.

It is simply inconceivable that Illinois is so short-sighted as to deny vocational and technical training given at junior colleges, colleges, and universities to children who need it so desperately, and when the federal government pays half the cost. There is no rational basis for denying children pursuing this training at these schools, nor did the defendants offer any justification. The defendant welfare officials must do more than showing that the denial of AFDC benefits to children in attendance at these schools saves money. *Shapiro v. Thompson*, 394 U.S. 618, 631-633 (1969).

Judge Marovitz in his concurring opinion noted the discrimination "between persons who pursue the same profession, but in different ways. For example, a girl enrolled in a nurses' training course would be eligible for welfare support, but one attending college and majoring in nursing

would not so qualify." [A. 97]. But he found it a "theoretical imperfection" and did not invalidate the Illinois statute. Measuring the statute against the purposes of the AFDC program reveals that each child's education is to be treated on an individual basis. Sections 402(a)13) and (14) of the Act, and HEW regulations, Handbook, §§ 4260 and 4300(B)(1)(b), interpreting the Act, require each state to have a developed plan for each child receiving assistance, including providing "... for leadership directed toward assuring that ... educational opportunities ... that are generally available to other children are equally available to dependent children." Handbook, § 4300(B)(1)(b). There is no doubt that the Chicago Junior Colleges are a community resource that is available to Omega and other welfare children if they are allowed sustenance benefits while in attendance. Breaking the grip poverty and dependency have long held on welfare families requires attention to the needs of each individual if the job is to be done. Poverty is not a "theoretical" matter. It is a drain on our national resources and our people. *King v. Smith,* 392 U.S. 309, 334 (1968).

As we have stated, the equal protection test previously set forth mandates an examination of the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. The Illinois statute and regulation cannot be viewed in a vacuum. They must be viewed in the context of the federal-state AFDC program. The discussion above shows the following invidious and unjustifiable distinctions:

(1) The State of Illinois and the federal government pay $6,415,917 to junior colleges to provide post secondary vocational and technical training and the Illinois Department of Public Aid denies AFDC to a welfare child taking that training at a junior college.

(2) The Illinois Department of Public Aid will provide AFDC and tuition to a welfare child attending a private vocational or technical school, but denies

these benefits to the same child if he attends a public vocational or technical school if it is labelled a college.

(3) The federal AFDC program has a comprehensive scheme of education, work training, and employment to get recipients permanently out of poverty and dependency, but the Illinois Department of Public Aid denies to many eligible children the benefits necessary to attend the schools, colleges, and universities which will enable them to get permanently off welfare rolls and on to the tax rolls.

(4) The stated purpose of the challenged Illinois statute and regulation is to assist the intellectually inferior child and to deny aid to the intellectually average and superior child, while other state statutes express a purpose to assure to every child equal access to public and private educational institutions.

(5) Illinois and Chicago have a great need for qualified black and minority group teachers, but the Illinois statute and regulation require a financial sacrifice to obtain this profession beyond the endurance of most people.

Appellants wish to make it clear that they are not arguing for increased welfare benefits here. This is not a right to welfare or right to life proposition. But they emphasize that the right to equality of treatment is at issue. The rulings of this Court in *Dandridge v. Williams,* 397 U.S. 471 (1970) and *Rosado v. Wyman,* 397 U.S. 397 (1970), are not challenged. The State of Illinois might get out of the welfare field entirely. But as long as it participates in the AFDC program, it may not impose the invidious distinctions which are the subject matter of this suit. The guarantee of equal protection must be applied, and it must be applied in accordance with the law.

III.

ILLINOIS' BLANKET PROHIBITION OF COLLEGES AND UNIVERSITIES FROM CONSIDERATION AS APPROPRIATE VOCATIONAL OR TECHNICAL SCHOOLS VIOLATES THE DUE PROCESS RIGHTS OF NEEDY DEPENDENT CHILDREN PURSUING VOCATIONAL OR TECHNICAL TRAINING AT THESE SCHOOLS.

The statute and regulation prohibiting aid to welfare children who might choose to enroll in a junior college, college, or university deny them access to a substantial source of vocational and technical training and is so arbitrary and irrational that it denies due process of law guaranteed by the Fourteenth Amendment. *Remillard v. Carleson*, 39 U.S.L.W. 2584 (N.D. Cal., March 31, 1971). *Cf. Bagget v. Bullitt*, 377 U.S. 360, 367 (1964).

Many relatively non-academic professions or vocations can be prepared for only at a junior college, college, or university. A child who aspires to become a basketball coach, a public aid caseworker, or an elementary school teacher is required by law to attend a university or college to obtain the necessary training.

The educational realities of our society disclose the irrationality and arbitrariness of the statute and regulation on their face and as applied. See *Chastleton Corp. v. Sinclair*, 264 U.S. 543 (1924) (due process rationality to be judged in light of contemporary circumstances). Illinois law, for example, authorizes school boards "to enter agreements with junior colleges for the purpose of providing advanced vocational training of students in the 11th and 12th grades who desire preparation for a trade." 122 Ill. Rev. Stat. § 10-22.20(a) (1969). Under defendant Swank's regulation, § 150, children over 18 but in the 11th and 12th grades would not be eligible for AFDC benefits if they take advanced vocational training at a junior college, thus depriving them of an opportunity to achieve a high school education with AFDC support to enable them to subsist.

When a welfare child seeks post secondary education, whether he or she receives AFDC while attending a course of study in any of a number of different types of schools depends not on the fact that the courses of training are alike, but on the fact that the places of training are different. Illinois exalts form over substance.[15]

The Illinois statute and regulation at issue do not define what a vocational or technical school are. IDPA-CAM §1017.2 states only that a technical or vocational school must be accredited. By regulation and administrative decision of defendant Swank, junior colleges and colleges which are accredited are excluded from consideration. Private business and vocational schools that might be considered are required by Illinois law to be certified. 144 Ill. Rev. Stat. §140 (1969). How a caseworker charged with administering the Illinois statute and regulations in the concrete situation of a welfare family with a child who wants to pursue a vocation is to decide whether a chosen school is appropriate under the regulations defies imagination. When important and fundamental educational interests of dependent children are at stake, due process requires that the schools that are acceptable be reasonably ascertainable.

In considering what a vocational school is, the defendants may be considered bound by the common dictionary definition of "vocational." *The Random House Dictionary of the English Language* (1967) defines vocational as follows:

> **vo·ca·tion·al**, *adj.* 1. of, pertaining to, or connected with a vocation or occupation: a vocational aptitude; a vocational school. 2. of, pertaining to, or noting instruction or guidance in an occupation or profession chosen as a career or in the choice of a career: a vocational counselor, vocational training.

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[15] The Social Security Act, § 406(a)(2)(B), however, refers to the nature of the training, "*a course of vocational or technical training*," without reference to the place at which that training is obtained. (Emphasis added.)

Omega's pursuit of a career in the teaching profession is clearly within the meaning of vocational training. It is the goal and intent of the person which is determinative, not the particular institution attended.

To interpret vocational or technical school as excluding junior colleges, colleges, or universities as appropriate forums for such schools is so arbitrary and irrational as to violate due process of law.

IV.

THE EXCLUSION OF NEEDY DEPENDENT CHILDREN BETWEEN THE AGES OF 18 TO 21 ATTENDING A COLLEGE OR UNIVERSITY BY ILLINOIS' AFDC CHILD AGE LAW AND REGULATION VIOLATES THE SOCIAL SECURITY ACT AND REGULATIONS OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE.

The Social Security Act of 1935 established a number of programs to provide for the security of children.[16] Subchapter IV of the Act created a federal-state program to provide public assistance payments to families with needy dependent children deprived of parental support. 49 Stat. 627, as amended, 42 U.S.C. §§ 601-644. In *King v. Smith*, 392 U.S. 309, 316-317 (1968), this Court stated that no state was or is compelled to participate in this program but if it does, as Illinois does, the federal Act requires that the State submit a plan which complies with the Social Security Act and rules and regulations promulgated by the Department of Health, Education and Welfare (HEW).

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[16] See Report of the Committee on Economic Security, *Social Security in America*, "Security for Children," found in House Committee on Ways and Means, Economic Security Act, Hearings on H.R. 4120, 74th Cong. 1st Sess. pp. 47-50 (1935); H.R. Rep. No. 615, 74th Cong., 1st Sess., 9-13 (1935); Sen. Rep. No. 628, 74th Cong., 1st Sess., 16-21 (1935).

In *King*, a mother and her four minor children living in Dallas County, Alabama, were removed from the list of persons eligible to receive Aid to Families with Dependent Children (AFDC) benefits. The denial of benefits was based on Alabama's "substitute father" regulation which held that an "able-bodied man, married or single, is considered a substitute father of all the children of the applicant . . . mother" if he cohabitated with her. Alabama considered it irrelevant whether the substitute father was the actual father, whether the substitute father was legally liable to support the children or whether he did in fact contribute to their support. If there was a "man-in-the-house" the family was automatically excluded from consideration for AFDC. The Smith family was excluded from the welfare rolls because a Mr. Williams visited Mrs. Smith on weekends and had sexual relations with her.

The Smith family sued to enjoin the operation of this Alabama regulation on the grounds that it conflicted with the requirements and policy of the Social Security Act and defined "parent" in a manner inconsistent with the Act and that it denied the family equal protection of the laws. In essence, the family claimed that there was a "parent" absent from the home within the meaning of § 406(a) of the Act. This Court agreed. It found that the protection of dependent children was the paramount goal of the AFDC program, that a "substitute father" with no legal obligation to support the children did not assure the protection Congress had in mind and invalidated the Alabama regulation:

> . . . because it defines "parent" in a manner that is inconsistent with § 406(a) of the Social Security Act. 42 U.S.C. § 606(a). In denying AFDC assistance to appellees on the basis of this invalid regulation, Alabama has breached its federally imposed obligation to furnish "aid to families with dependent children . . . with reasonable promptness to all eligible individuals. . . . 42 U.S.C. § 602(a)(9) (1964 ed., Supp. II). *King v. Smith*, 392 U.S. 309, 333 (1968).

The federally imposed obligation to furnish aid to *all eligible individuals* is based on the "category singled out for welfare assistance by AFDC. . . . the 'dependent child,' who is defined in § 406 of the Act . . . ." and the requirement of § 402(a)(10) that aid be furnished promptly to all eligible individuals. "In combination, these two provisions of the Act clearly require participating states to furnish aid to families with children who have a parent absent from the home, if such families are in other respects eligible. See also, Handbook, Pt. IV, Section 2200(b)(4)." *King v. Smith*, 392 U.S. 309, 317 (1968).

This case now before the Court raises the question of whether a child who met all the requirements of the definition of "dependent children" contained in § 406(a) could be excluded from AFDC by the defendant welfare officials' enforcement of an Illinois statute and regulation defining dependent children in a manner inconsistent with the Social Security Act. Mrs. Townsend and her dependent child, Omega, alleged in their intervening complaint that the defendant state and county welfare officials had breached their federally imposed obligation based on 402(a)(10) and 406(a) to furnish aid to families with dependent children "with reasonable promptness to all eligible individuals. . . ." by removing them in January, 1967, from the list of persons eligible to receive AFDC [A. 27]. Appellants arguments will proceed in light of this Court's decision in *King v. Smith*, 392 U.S. 309 (1968).

Section 406(a) of the Act, 42 U.S.C. § 606(a), defines a dependent child as follows:

> § 406. Definitions
>
> When used in this part–
>
> (a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather,

> stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment; . . .

Looking at Section 406(a), it states that a dependent child means a needy child who meets the qualifications of (1) being deprived of parental support, (2) living with an appropriate relative, (3) being age qualified, and (4) between ages 18 and 21, attending school. Section 406(a)(2) contains the age and school attendance requirement. A child over 18 and under the age of 21 is required by the Act to be a student "regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment." The language indicates a clear congresssional purpose to provide assistance to children over age 18 if they are attending school. Appellant Omega Minor qualified as a dependent child within the meaning of the federal statute.

Defendant Swank defines dependent children in a manner inconsistent with the Social Security Act. Illinois Department of Public Aid Categorical Assistance Manual (IDPA-CAM) §150 was enacted by defendant Swank, Director of the Illinois Department of Public Aid, on November 1, 1967, pursuant to rule making power granted by 23 Ill. Rev. Stat., §12-13 (1967). It specifically excludes needy dependent children attending college:

> AGE REQUIREMENTS
>
> *ADC*
>
> Dependent children under 18 years of age, unless 18 through 20 years of age and in regular attendance

> in high school or vocational or technical training school. (This does not include 18 through 20 year old children in college.)

It is his administrative interpretation of 23 Ill. Rev. Stat., (1967), § 4-1.1, *Child Age Eligibility*:

> § 4-1.1 Child Age Eligibility:
>
> The child or children must be under age 18, or age 18 or over but under age 21, if in regular attendance in high school or in a vocational or technical training school. "Regular Attendance," as used in this Section, means attendance full time during the regular terms of such schools, or attendance part time during such regular terms as may be authorized by rule of the Illinois Department for the purpose of permitting the child to engage in employment which supplements his classroom instruction or which otherwise enhances his development toward a self-supporting status. 1967, April 11, Laws 1967, p. 122, § 4-1.1; 1967, July 31, Laws 1967, p. , S.B. No. 1141, §1.

By specifically excluding college and university children between the ages of 18 to 21, defendant Swank has thrown the Illinois State Plan into conflict with the governing federal law. The statute regulation and state plan are invalid because the federal law makes a child, such as Omega, eligible for AFDC. Illinois' noncompliance has resulted "in limiting the welfare rolls unduly and thus channeling the matching federal grants in a way not intended by Congress." *Rosado v. Wyman*, 397 U.S. 397, 421 (1970); *California Department of Human Resources Development v. Java*, 39 U.S.L.W. 4491, 4495 (U.S. Apr. 26, 1971); *King v. Smith*, 392 U.S. 309, 333 n. 34 (1968).[17]

[17]The supremacy of the Social Security Act over conflicting state law or plan provisions was established in King v. Smith, 392 U.S. 309, 333 n.34 (1968):

> There is of course no question that the Federal Government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any

The defendant welfare officials argued in the court below that they might pick and choose those dependent children made eligible by Congress to whom they would provide aid. The lower court agreed with them, finding that, "[T]he words of Section 406(a)(2) do not expressly and unequivocably require states to incorporate the federal definition of dependent children in their own programs," [A. 89]. The Solicitor General of the United States as amicus curiae before this Court, expressed its view that, "Secton 406 merely indicates the maximum scope of federal financial participation available to state AFDC programs," and that HEW has "consistently approved state plans which set a maximum age limit lower than that permitted by Section 406(a)." Brief of the United States 5, 7-8. The Solicitor General, however, has recently expressed the view in another Illinois welfare case that Illinois has made the choice of complying with governing federal standards:

> Like most other states, Illinois has already made the choice of compliance with the governing federal standards, Ill. Code 23-12-4.5; 23-11-8. Injunctive relief directing future compliance with federal standards is thus fully appropriate. Compare, *Rosado*, supra; *California Department of Human Resource Development v. Java*, No. 507, this Term, decided April 26, 1971.

Memorandum for the United States as Amicus Curiae in *Swank v. Rodriguez*, (No. 1269, October Term, 1970). Even if the general position expressed by the Solicitor General in intervening appellants' case were correct, the

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state law or regulation inconsistent with such federal terms and conditions is to that extent invalid. See Ivanhoe Irrigation District v. McCracken, 357 U.S. 275, 295, 2 L.Ed. 2d 1313, 1327, 78 S. Ct. 1174 (1958); Oklahoma v. Civil Service Comm'n, 330 U.S. 127, 143 91 L. Ed. 794, 806, 67 S. Ct. 544 (1947). It is equally clear that to the extent HEW has approved any so-called "man-in-the-house" provision which conflicts with § 406(a) of the Social Security Act, 42 U.S.C. § 606(a), such approval is inconsistent with the controlling federal statute.

view of the Solicitor General is that Illinois has waived whatever right it had to exclude eligible persons. See also 23 Ill. Rev. Stat., § 4-1.4, (1967), *Conditional Extension of Coverage.*

The interpretation of the court below and that urged by the Solicitor General on behalf of the government in this cause are contrary to the plain meaning of the federal statute, the administrative interpretation given to the Act by HEW, to the purpose and legislative history of AFDC, and the judicial construction this Court has given to the Social Security Act.

A. The Plain Meaning Of The Social Security Act Requires That Aid Be Furnished To Needy Dependent Children Between Ages 18 To 21 In Attendance At A College Or University.

The State of Illinois clearly has a duty under Section 402(a)(10) of the Act to furnish aid with reasonable promptness to those individuals declared eligible by the Act. *King v. Smith,* 392 U.S. 309, 317, 333 (1968); *Dandridge v. Williams,* 397 U.S. 471, 481 (1970). Section 406(a) of the Act defines those dependent children to whom aid is to be furnished promptly. This definition section applies to all the sections of the Act contained in Part A of subchapter IV, and the definition section clearly indicates that this is so. That section begins, "When used in this part—." This "part" is "Part A—Aid to Families with Dependent Children," which includes all the requirements of § 402(a), including the requirement of furnishing aid promptly. As this Court noted in *King,* it is the combination of these two sections which mandates that a state must furnish aid to the intervening appellants. *King v. Smith,* 392 U.S. 309, 317 (1968).

The words of the statute itself are the most persuasive evidence of the purpose which the legislature undertook in enacting it. Unless the plain meaning leads to absurd, futile, or unreasonable results, the Court need not look beyond

the words to find the purpose of the Act. *United States v. American Trucking Associations,* 310 U.S. 534, 543 (1940); *United States v. Oregon,* 366 U.S. 643, 648 (1961); *Rosado v. Wyman,* 397 U.S. 397, 412 (1970). Who is willing to say that in today's society it is absurd, futile, or unreasonable for Congress to make provision for the sustenance of children between the ages of 18 to 21 who are pursuing their education at a school, college, or university? The United States Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 1970-1971,* indicates post high school training is necessary for myriad occupations. The conclusion must be that all children who meet the requirements of § 406(a) are eligible.

There is no language in § 406(a), or elsewhere in the Act, that is authority for a state to ignore the provisions of the Act, as Illinois has done, if it feels that it is reasonable to do so. Such an interpretation would mean that Congress was not reasonable in setting federal standards in the original Act or in its subsequent amendments. States are not free to spend federal money provided under the Act in any manner they think reasonable. States must meet the conditions specified in the Act, Section 402(b).

In *King v. Smith,* 392 U.S. 309, 318 (1968), Alabama justified the regulation excluding needy dependent children from AFDC when there was a "substitute father" or "man-in-the-house" because denying these children aid was a "legitimate way of allocating its limited resources available for AFDC assistance, in that it reduces the caseload of its social workers and provides increased benefits to those still eligible for assistance." Two state interests supposedly served by the allocation of AFDC which resulted from the regulation were the discouragement of immorality and illegitimacy. By a similar parity of reasoning, Illinois has justified a *total exclusion* of otherwise eligible college and university students because it will encourage their employability "as soon as possible" and relieve the taxpayer "of the great burden of Public Assistance" [R. 268]. This

Court stated in *King* that "it is simply inconceiveable . . . that Alabama is free to discourage immorality and illegitimacy by the *device of absolute disqualification* of needy children." (Emphasis added.) Alabama could deal with these problems by several different methods under the Act, but the one it had chosen "plainly conflicts with the Act." 392 U.S. at 326-327. Illinois' choice of absolute disqualification of needy dependent children attending a college or university, without even the pretense that their needs are being met, as Alabama was able to put forward with its "substitute father" regulation, or any allowable justification that the regulation is related to need, since all student earned income must be disregarded (§ 402(a)(8)(A)(i)), plainly conflicts with the Act.

The only discretion Congress granted the states was in setting standards for students and the schools a student might attend. This is contained in the second clause of § 406(a)(2)(B), and reads:

> . . . (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and *(as determined by the State in accordance with standards prescribed by the Secretary)* a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment. (Emphasis added.)

The limiting of even this small area of discretion by "standards prescribed by the Secretary"[18] is strong evidence of Congress' continuing intent to circumscribe any attempt by the states to limit eligibility by disqualifying the student

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[18] HEW Handbook, Pt. IV, § G-3220 (See Appendix B at 5-7, *infra*) contains the standards required by the Secretary. Standards concerning students are contained in ¶ 3. Students in school part time are considered to be in regular attendance. Other standards relate to denying a "course of vocational or technical training." The states are precluded from arbitrarily limiting attendance at a school, college or university by the requirement that the decision should be left to the individual family (¶ 5).

or the student's school for receipt of AFDC. Congress allowed the states limited discretion in the selection of minimum standards for the schools a student might attend when it amended § 406(a) in 1965 from "as determined in accordance with standards prescribed by the Secretary" to the above "as determined by the State in accordance with standards prescribed by the Secretary." 79 Stat. 422.[19] This is similar to the treatment accorded the term "parent" in *King v. Smith*, 392 U.S. 309, 327 (1968). "Parent" as defined in the Act meant one who is legally obligated to support the dependent child under the laws of the state. This was reaffirmed in *Lewis v. Martin*, 397 U.S. 552, 558-559 (1970). Illinois has a comprehensive scheme of legislation regulating the standards of private and public schools. 122 Ill. Rev. Stat. § 2-3.25 (1969) (public schools regulated by the Superintendent of Public Instruction, "Superintendent"); § 697 (vocational education in public schools regulated by Board of Vocational Education and Rehabilitation); 144 Ill. Rev. Stat. § 122 (1969) (privately operated colleges, junior colleges and universities must obtain Certificate of Approval from the "Superintendent"); § 138 (privately owned business and vocational schools—standards are pro-

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[19]The 1965 amendment to § 406(a) reads:

> ELIGIBILITY OF CHILDREN OVER AGE 18 ATTENDING SCHOOL
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> Clause (2)(B) of section 406(a) of the Social Security Act is amended by striking out "(as determined in accordance with standards prescribed by the Secretary) a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent," and inserting in lieu thereof "(as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university. 79 Stat. 422.

The prescription of minimum standards for the school or course of training is a legitimate interest of the student and the state. Avoidance of some schools may indeed be desirable. *See FTC v. Blackstone College of Law*, 44 F.T.C. 756 (1948) (LLB. obtainable in three days upon payment of additional fee).

mulgated by the "Superintendent"); §189 (public institutions of higher education—regulated by Board of Higher Education).

No option or discretion is granted by the use of the word "or" in:

> (2) who is (A) under the age of eighteen, *or* (B) under the age of twenty-one and . . . a student regularly attending a school . . . .

To interpret "or" to give an option means a state can choose between two courses. It could choose (A) or (B) independent of each other. Such is not the case here. Illinois would not maintain that it could limit AFDC solely to children "under the age of twenty-one and . . . a student regularly attending a school. . . ." All preschool children would be excluded under (B). Such a result would clearly not square with (A) or the stated purpose of the Act to furnish aid to needy dependent children, expressed in § 401. Neither is (B) alone an option to be adopted or not to be adopted to supplement (A). The purpose of (B) is to impose a *school attendance condition* on 18 to 21 year olds that is not placed on children under age 18. Finally (B) is not a grant of discretion to set age levels at 19, 20 or 21 or a grant of discretion to aid students attending certain types of schools but not others. If the states have discretion in these areas there would be no legal standard by which to determine if it was complying with the Act. If the Court upholds the State of Illinois in excluding college children under (B), then it is determining that all of (2) is discretionary with the states. Under such a ruling a state might exclude children over ages 12 or 14 or 16 and claim compliance with the Act and the right to federal money. This is certainly not what Congress intended. Congress intended a uniform national policy on eligibility subject only to the financial ability of the states to aid all those made eligible. The power of the states is to limit the amount of aid the eligibles receive, as was upheld in *Rosado v. Wyman*, 397 U.S. 397 (1970) and *Dandridge v. Williams*, 397 U.S. 471 (1970). The states need no other

power. The legal standard must be and is the Social Security Act itself. And the Act grants AFDC to all children between 18 and 21 if needy, dependent and in attendance at one of the schools or courses of training described in § 406(a)(2)(B).

Section 406(a)(2) is not a provision of mutually exclusive alternatives. It is an integrated and unitary whole designed to provide for the protection of dependent children. The "or" must be read in the conjunctive sense of "and," *i.e.*, aid will be furnished to those under 18 and to those under 21 and over 18 if in school. *United States v. Fisk*, 70 U.S. (3 Wall.) 445, 447 (1865) ("[C]ourts are often compelled to construe '*or*' as meaning '*and*', and again '*and*' as meaning '*or*'".); *In re Rice*, 165 F.2d 617, 619 n. 3 (D.C. Cir. 1947); *Union Starch and Refining Co. v. NLRB*, 186 F.2d 1008, 1014 (7th Cir.), *cert. den.* 342 U.S. 815 (1951).

The court below paid scant attention to the language of § 406(a). It disregarded the mandatory requirement § 402 (a)(10) places on the state as to furnishing aid to those persons described in § 406(a). The court instead relied on § 401 of the Act, which expresses the public purposes of the Act, to find a meaning which would allow the defendants to exclude Omega. The court stated, "Variations among state programs were clearly envisioned as is evidenced by recognition that the purposes of the Act would be carried out 'as far as practicable under the conditions of such state,'" [A. 88]. The court below erred in reading the plain meaning of this statute also. The statute reads as follows:

> § 601. Appropriations
>
> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, *as far as practicable under the conditions in such State*, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents

> or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children. (Emphasis added.)

The *"as far as practicable under the conditions of such State"* provision is a clause which follows and modifies "enabling each state to furnish financial assistance and rehabilitation and other services" (Emphasis added.) It refers only to the *amount of aid* that may be furnished a child. It does not refer to the children who will be eligible for the aid. It recognizes that the assistance payment to a child may vary from state to state, depending upon the fiscal resources of each state. See *King v. Smith*, 392 U.S. 309, 318 n. 14 (1968). Variations were indeed recognized, but they were variations in payment from state to state and not variations in the children declared eligible for those payments. It cannot realistically be assumed that Congress in enacting national legislation for the general welfare intended the persons it declared eligible for benefits to have that eligibility taken away by the exclusionary practices of a state. Congress in enacting § 402(a)(10) in 1950 specifically disapproved of the use of this device by the states to conserve their public assistance funds.[20]

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[20]When Congress added § 402(a)(10) to the Act in 1950 and similar provisions in the other categorical programs it was for the purpose of dealing with the fact that many congressionally declared eligible people were not receiving any aid because they were being kept on waiting lists. Sen. Rep. No. 1669, 81st Cong., 1st Sess. 16-17 (1949); H.R. Rep. No. 1300, 81st Cong., 1st Sess. 43 (1949). The Social Security Board's Bureau of Public Assistance policy had been to prefer waiting lists rather than reducing the benefits for distribution to all eligible individuals. Altmeyer, The Formative Years of

A plain reading of the Social Security Act, which requires states to give aid to a federally defined class of recipients, does not require that assistance be furnished beyond what is "practicable" for a state, because a state could lower its benefit level to conform to an AFDC budget "practicable under the conditions in such a state." Section 401; *Rosado v. Wyman*, 397 U.S. 397 (1970); *King v. Smith*, 392 U.S. 309, 318-19 nn. 14-15, 334 (1968); *Dandridge v. Williams*, 397 U.S. 471, 478 (1970).

In *Dandridge*, this court upheld a maximum grant regulation adopted by the State of Maryland. The effect of the regulation was to place a limit on the amount of welfare money ($250) a large family might receive to meet their state-determined needs. The needs of large families often exceeded the $250 maximum. Maryland, by the use of the maximum grant did not, however, exclude any eligible child from receipt of AFDC. This met the requirement of § 402(a)(10) because, "[S]o long as some aid is provided to *all eligible families* and *all eligible individuals*, the statute itself is not violated." *Dandridge v. Williams*, 397 U.S. 471, 481 (1970). Maryland furnished AFDC to all children made eligible by Congress. Illinois does not.

This case is not a maximum grant case as was *Dandridge*. *Dandridge* makes clear that Illinois could, if it wished, adopt a maximum grant scheme, provided it met constitutional tests within the categories of fiscal limitations chosen. 397 U.S. 471, 482. *Dandridge* also makes clear that Illinois cannot exclude eligible families and eligible individuals from some receipt of AFDC. If, arguendo, Illinois imposed a maximum grant of $1 on children between the ages of 18 to 21 attending school, they would still *be eligible* for that

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Social Security 60 (1966). Congress rejected this approach in enacting § 402(a)(10). The House Report stated:

> Available funds should be used for the benefit of all persons who meet the conditions of eligibility, even if the amount of assistance granted to those already on the rolls must be reduced. H.R. Rep. No. 1300, 81st Cong., 1st Sess. 43 (1949).

$1 and income exclusions, medical, and other care and training benefits under the Social Security Act. *Rosado v. Wyman*, 397 U.S. 397, 413 (1970). Illinois has avoided facing the political consequences other states have had to face by cutting recipients grants assuming it wants to maintain a constant state welfare budget by not aiding children attending a college or university. By excluding these children Illinois is "limiting the welfare rolls unduly and thus channeling the matching federal grants in a way not intended by Congress." 397 U.S. 397, 421.

A further misallocation of federal funds and additional burden on welfare families results from Illinois exclusion of these children. The income exclusion provision of § 402(a)(8)(A)(i) prevents any earned income of a student from being budgeted against the family's total need. In Illinois an otherwise eligible child such as Omega attending college and earning income will *reduce* the amount of AFDC the parent or relative and siblings receive *because he or she is not eligible* for AFDC. It is clear that Congress never intended this to happen in enacting § 402(a)(8)(A)(i). Illinois is not required to adopt the federal program, but once done, it must apply the federal standards. It cannot adopt the program and then exclude certain eligible children. Neither can it adopt the program in piece meal fashion.

As a matter of statutory and case analysis, the lower court's judgment must be rejected as deficient for failing to come to grips with the words of § 406(a), the intent that they apply throughout the AFDC title, their relation to § 402(a)(10) and other provisions of the Act as interpreted by this Court in *King v. Smith*, 392 U.S. 309 (1968), and the practical and political consequences flowing from Illinois' failure to furnish aid to all eligible families and all eligible individuals.

B. HEW Regulations Require Illinois To Furnish AFDC To Needy Dependent 18 To 21 Year Old College Children.

The Department of Health, Education and Welfare, the administrative agency responsible for overseeing compliance of the states with the Social Security Act and regulations issued pursuant thereto, found in HEW's Handbook, Part IV, section G-3200 *et seq.*, issued October 11, 1965, (Text at Appendix B) interpreted the Act to require aid to be furnished to children receiving public assistance who wish to attend college. Section G-3220 states in relevant part:

> A student must be in regular attendance in a school, including elementary grades, high school, college or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment. Those who are attending school, or taking a course of vocational or technical training, on a part-time basis are considered to be in regular attendance.
>
> * * * * *
>
> As is customary with families not receiving public assistance, the decision as to the course of study or training to be taken should be left to the youth and his parents. This does not preclude the recommendations of educational authorities as to the program best suited to the youth's capacities. Within the age limit set by the State, there should be a choice of attending a school, college or university or taking a course of vocational or technical training for gainful employment.

The regulation precludes Illinois' total exclusion of college and university children from AFDC benefits. This is emphasized by the statement in the regulation that the regulation does not intend to "*preclude* the recommendations of educational authorities as to the program best suited to the youth's capacities." (Emphasis added.) There is nothing in the regulation which indicates that Illinois may choose to

aid vocational or technical school students and totally exclude college or university students. The statement that the decision as to the course of study or training is to be left to the youth and his parents militates strongly against such a construction. *Remillard v. Carleson,* 39 U.S.L.W. 2584 (N.D. Cal., March 31, 1971) (three-judge federal district court invalidated as inconsistent with HEW regulations California's regulation totally excluding families of U.S. servicemen from AFDC because a parent was not continually absent from home.)

These regulations, issued shortly after the 1965 redefinition of dependent child in § 406(a) interpreted the congressional mandate to preclude defendant welfare officials' exclusion of Omega. The position of the United States expressed in its amicus curiae brief before this Court is not consistent with HEW's Handbook, §§ G-3200, G-3220 and G-3240 discussed above. The United States claims that the states "may make reasonable classifications limiting the persons, within their definition to whom they will provide AFDC." (Brief of the United States at 5.)

Recently, HEW has adopted general provisions regarding coverage and eligibility in financial assistance programs. Title 45 C.F.R., § 233.10 (Supp. 1971). Section 233.10(a)(1)(i) and (ii) announce:

> (i) States have substantial latitude and corresponding responsibility for determining the coverage, nature, and scope of their public assistance programs. Although the public assistance titles define the coverage in which the federal government will participate financially, a state may provide coverage on a broader or more limited basis. However, it may not impose any eligibility condition that is prohibited under the Social Security Act.
>
> (ii) The group selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis and must not result in inequitable treatment of individuals or groups in light of the provisions and

purposes of the public assistance titles of the Social Security Act.

At first glance these general statements may appear to support the position of the Illinois welfare officials that they may exclude college students. However, this regulation is not authority for exclusion of persons declared eligible by Congress, and if it was it would be invalid as being inconsistent with the Social Security Act. The regulation itself notes that a State may not impose any eligibility condition that is prohibited under the Social Security Act "or result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act." In sum, these regulations are no authority for Illinois to exclude college and university students, otherwise eligible, from AFDC benefits. Such an exclusion is both arbitrary and unreasonable in light of the congressional definition of "dependent children" and the purposes of the public assistance titles.

In addition, the interpretation advanced by the court below and the United States that the education of dependent children is not the most central and overriding purpose of the Act is inconsistent with long standing HEW regulations which provide for the economic security of needy dependent children. HEW Handbook, §§ 3400, 3401. Section 3401 prescribes the education of a child as one of the main purposes of the aid to dependent children program:

Purpose of Aid to Dependent Children

Aid to dependent children is an essential part of a broad social plan of public services, including *education*, health, welfare, and the social insurances, that the Nation is progressively developing to insure its children opportunity to:

1. Grow up in a setting of their own family relationships;
2. Have the economic support and services they need for health and development;
3. Receive an *education* that will help them realize their capacities; and

4. Share in the life of neighborhood and community.

(App. 12a-13a) (Emphasis added.)

It goes without saying that the amount of education necessary to succeed in life varies with the particular conditions of a society. What is clear is that Congress and HEW have made the determination that college or university education may well be essential to a child's welfare, and have accordingly made provision for it.

Additional HEW regulations adopted after the 1956 and 1962 amendments to enforce the mandate to maintain and strengthen life established the right of a family to choose the type of education their children will pursue. HEW Handbook § 4223.1, *Strengthening Family Life* provides in part:

> Families have the right and the responsibility to provide for adequate health care, *education* and vocational training in accordance with the capacities of the children; and to provide further participation in the community life. (App. 18a)

HEW Handbook Pt. IV § 4223.2 makes it clear that *"self-support is not a major program emphasis for the aged or children. . . ."* (emphasis added) (App. 18a). The *education* of a child is, however, a major and essential program emphasis.[21] See also, § 402(a)(8)(A) (student income exclusion). These regulations are hardly support for the state's position that a child over 18 attending a college or university should go out and get a job while a child attending a vocational or technical school need not, or for

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[21] Under Illinois law the education of children is a parental responsibility. 68 Ill. Rev. Stats., §102(b), (1969). The education of a child is considered so important that in the event of a divorce between the parents, Illinois law gives the divorce courts jurisdiction to order a parent to make payments for the support of a child's education beyond the child's age of majority. 40 Ill. Rev. Stat. § 19 (1969). See also, *Roe v. Doe*, 39 U.S.L.W. 2533 (N.Y. Sup. Ct., Mar. 16, 1971).

the view of the court below and the government who advocate that the Social Security Act and HEW regulations do not mean what they say.

The position urged by the government also fails to square with this Court's decision in *King v. Smith*, 392 U.S. 309 (1968). In its brief (page 10) the government claimed that "the language in *King v. Smith* can be broadly interpreted to support the proposition that the states are required to furnish aid to all dependents who fall within the federal definition. No such interpretation, of course, could be squared with the long standing administrative practice under § 406(a) or its legislative history." The brief argues that the central purpose of the AFDC program is "to provide assistance to children deprived of parental support who continue to live with relatives of a certain proximity." The government theorizes on whether a state can define relatives at its discretion and ignores that the main goal is to provide aid to the dependent child. *King v. Smith*, 392 U.S. 309 (1968).

Congress meant to protect families without a breadwinner. But a breadwinner supplies more than bread to children under his care, and children need more than just daily bread.[22] The provision for a child's education is the most important function and focus of childhood, and one of the greatest responsibilities of a parent. It is so important that it is compulsory for many years of a child's life. Congress had a higher goal in mind than providing for the mere physical existence of dependent children.

The government admits that the Department of Health, Education and Welfare has been unable or unwilling to secure the states' compliance with the Social Security Act or the regulations of HEW on dependent children age eligibility. At pages 7-8 of its brief, the government confessed, "Since the onset of the AFDC program, the Department has consistently approved state plans which set a maximum age lower than that permitted by § 406(a)." The reason for this

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[22] Matthew 4:4 ("Man shall not live by bread alone. . . .")

is given at pages 4-5 of its brief as the principle that "states may make reasonable classifications limiting the persons, within the definition, to whom they will provide AFDC." The justification for the principle is sought in the legislative history but grounded in "the consistent administration of the AFDC program by the Department of Health, Education and Welfare."

HEW has had a consistent practice of failing to honor the requirements mandated by the Social Security Act and its own regulations. HEW has approved state plans submitted by Texas and Missouri which required that AFDC benefits be terminated upon a child reaching age 14.[23] If anything at all is clear from the legislative history it is that there never was any congressional approval for limiting AFDC to less than all children under age 16. What the government would do is raise the long standing emasculation of the Social Security Act by HEW to a status of legitimacy by HEW's own wrongdoing. Appellants assert that on this point the government is plainly wrong, and that this Court has not and should not countenance purloining of federal funds by the states with the assist of HEW. *King v. Smith,* 392 U.S. 309, 333 (1968); *Rosado v. Wyman,* 397 U.S. 397, 420-421 (1970); *California Department of Human Resources Development v. Java,* 39 U.S.L.W. 4491, 4495 (U.S. Apr. 26, 1971); *Dandridge v. Williams,* 397 U.S. 471, 512-513 (1970) (Marshall, J. dissenting).

[23]Texas maintained an age requirement of "under 14 years" from the time it entered the AFDC program until 1964 when it moved the age up to "under 16, children 14 and 15 years of age must be attending school." Missouri entered the AFDC program with an age requirement of "under 16 years of age," but in 1946 reduced eligibility by changing to "under 14 years of age; may be extended to children age 14 and 15 if regularly attending school." Report, *Age as An Eligibility Factor in Aid to Families With Dependent Children,* Social and Rehabilitation Service, Assistance Payment Administration, Division of Program Evaluation, Program Characteristics Branch, January 13, 1971. (Report materials taken from Characteristics of State Public Assistance Plans: General Provisions–Eligibility, Assistance, Administration, June 1, 1970).

HEW's failure in this area is accepted by the government and the court below on what amounts to the doctrines of acquiescence and reenactment—that Congress has approved the consistent administration of the AFDC program by HEW by not altering the administration and by its amendments to § 406(a). It is readily apparent however, that HEW has not met the formal requirements of the doctrines. *See* Davis, *Administrative Law*, §§ 5.06-.10. The doctrines traditionally apply only to the regulations and formal interpretations which an administrative agency has given to a legislative enactment, and not the agency's actual practice. A vital inconsistency exists between HEW's interpretation in § G-3220 that the choice of school and training is to be left up to the individual family and its approval of state plans that deny these rights to poor families. Also the strong policy views in favor of supporting the congressionally determined scheme of education, work training and employability which grants AFDC to children in Omega's position necessitates the rejection of the doctrines of acquiescence and reenactment as a defense to HEW's tolerance of illegal state age eligibility requirements. *See King v. Smith*, 392 U.S. 309, 313 n.6 (1968); cf. *Koshland v. Helvering*, 298 U.S. 441 (1936); Davis, *Administrative Law*, § 5.06.

HEW's failure to enforce the Social Security Act and its own regulations has denied AFDC to Omega and thousands of Illinois children. HEW's failure, however, does not deprive the regulations of their validity or relieve Illinois of its duty to comply. The nub of HEW's failure is its fear that if it insists upon full compliance with the law a state might retaliate by withdrawing from the federal AFDC program. That such a result might in fact occur is not a legal justification for approving a statutorily and constitutionally deficient state plan. As Judge Marovitz held in his single judge court opinion in this case [A. 40], "[T]he executive branch cannot validate a welfare plan promulgated under an unconstitutional state statute and regulation," *Alexander v. Swank*, 314 F. Supp. 1078, 1081 (1969); *see also Cooper v. Aaron*, 358 U.S. 1 (1958) (political expediency does not jus-

tify denying a child's constitutional right to equal educational opportunity); *Rosado v. Wyman,* 397 U.S. 397, 426 (1970) (Douglas, J., concurring); *Dandridge v. Williams,* 397 U.S. 471, 516 (1970) (Marshall, J., dissenting); *Shapiro v. Thompson,* 394 U.S. 618, 641 (1969); Note, *Federal Judicial Review of State Welfare Practices,* 67 Colum. L. Rev. 84 (1967).

By failing to enforce the Act and its own regualtions HEW has squandered a good part of this nation's greatest natural resource—its people and their individual potentials and capabilities. HEW has funded a state supported educational and employment caste system. If an Illinois child's mother is poor and his father has left, the policies of the state and HEW assure that this child will be relegated to doing vocational work or less, perhaps another generation on welfare. In the ghetto areas of Chicago and other major cities many children who have come up knowing only public assistance have demonstrated the desire and capability to do college work, and have overcome obstacles to achieve that goal. There are enough hardships and handicaps for these children to face without the additional hardship of the denial of that aid which would enable them to keep body and soul together while struggling to get the education they need to get far out of poverty and the welfare system. There is no justification to continue the maladministration of the Social Security Act. The failure has cost this nation heavily. The correction must be made or the cost in the future will be even greater. *See King v. Smith,* 392 U.S. 309, 334 (1968).

The 1964, 1965 and 1968 amendments to the Act providing for AFDC benefits for 18 to 21 year old students, providing for a total disregard to their income, and providing a work incentive program for dependent children over the age of 16 not attending school make it clear that Congress has neither acquiesced nor approved the denial of AFDC benefits to college and university students. If anything, Congress has been critical of HEW for failing to insure that the

administration of the Act is in accord with the intent of Congress.[24]

C. The Legislative History Of The Congressional Definition Of Dependent Child Mandates That AFDC Be Furnished To Needy Dependent College Students Between The Ages Of 18 To 21.

The federal definition of dependent child for the AFDC program is contained in § 406(a) of the Social Security Act, which presently reads as follows:

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[24]The summary in the Senate Report accompanying the 1968 amendments capsulized the Senate's dismay over the administration of the Act by HEW and the Senate's demand that HEW carry out the intent of Congress:

> (k) *Summary*
>
> The committee recognizes that the bill would require the States to take on new and expensive tasks. Yet, if the job is to be done—if the number of families on AFDC is to be kept to the minimum—these new activities must begin in earnest. The Federal Government, which is the main financial support for the program, must be assured that the States carry out the intent of the Congress when taking on the new and expanded functions which will be required of them.
>
> The bill provides adequate Federal financial support for these expanded functions. It is estimated that by July 1, 1972, a cumulative 5-year total of $2,735 million will have been spent by the Federal Government on these functions. At the same time it is estimated that the new provisions will mean that fewer children will be receiving aid in that year than if the law were continued in its present form.
>
> Moreover, the committee intends that the Department of Health, Education, and Welfare make changes in its administrative directives under existing provisions of law which will be appropriate under the new provisions added by the bill. Specifically, the committee intends that the Department interpret its authority under present law to prescribe methods of administration which "are found by the Secretary to be necessary for the proper and efficient operation of the plan" in a manner which will support the intent of the committee.

Sen. Rep. No. 744, 90th Cong., 1st Sess. 166-67 (1967).

§ 406. Definitions.

When used in this part–

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first counsin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

The definition has been continually expanded by Congress throughout the history of the Social Security Act, thereby increasing eligibility of needy dependent children so that they may pursue or complete an education which meets the constantly expanding educational requirements for the various vocations, trades, occupations and professions, and the expanding educational opportunities that have accompanied the increased requirements.

A review of the legislative history of the development of the "age qualified child" definition confirms that Congress mandated that aid be furnished to all those included in the expanded definitions.

Illinois' position advanced in this case is that excluding college and university students saves the state money [A. 93]. Scrimping on the education of welfare children was claimed to be necessary for the fiscal integrity of the state. However, the Illinois Higher Education Assistance Corporation Act, 122 Ill. Rev. Stat. § 30-15.1 (1969), expresses a contrary position. The Illinois General Assembly

views the fullest education of the state's youth as an essential goal:

> § 30-15.1. Purpose
>
> The General Assembly has found and hereby declares that the provision of a higher education for all residents of this State who desire such an education and are properly qualified therefor is important to the welfare and security of this State and Nation, and consequently is an important public purpose; many qualified students are deterred by financial considerations from completing their education, with a consequent irreparable loss to the State and Nation of talents vital to welfare and security. The number of qualified persons who desire higher education is increasing rapidly, and the physical facilities, faculties, and staffs of the institutions of higher learning operated by the State will have to be expanded greatly to accommodate such persons, with an attendant sharp increase in the cost of educating such persons. A system of financial assistance of scholarships, grants, and guaranteed loans for qualified residents of college age will enable them to attend qualified institutions of their choice in the State, public or private. As amended 1967 Aug. 3, Laws 1967, p. 2644.

To help implement this necessary goal, Illinois enacted the Educational Facilities Act, 144 Ill. Rev. Stat. § 1301, *et seq.* (1969). The state declared its purpose as follows:

> § 1301. Declaration of purpose
>
> It is declared that for the benefit of the people of the State of Illinois, the conduct and increase of their commerce, the protection and enhancement of their welfare, the development of continued prosperity and the improvement of their health and living conditions *it is essential that this and future*

> *generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities and skills;* that to achieve these ends it is of the utmost importance that institutions for higher education within the State be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills; and that it is the purpose of this Act to provide a measure of assistance and an alternative method to enable institutions for higher education in the State to provide the needed additional facilities and structures for the public benefit and good and in execution of the public policy set forth above. (Emphasis added.)

The state's position in this case is to save money. However, the Social Security Act was not created with that purpose in mind. The Act was passed during the worst financial crisis this nation has ever experienced. But the human crisis behind it impelled the nation to spend large sums to provide for needy and dependent children and adults. The expansion of eligibility by Congress has always cost money. But Congress has recognized that there must be a balance between short-term financial considerations and long-term financial considerations. In the long run picture, encouraging children to obtain as full an education as possible is more likely to relieve the human distress and waste of national resources than a policy of allowing them to drift into the most menial tasks which may not exist tomorrow.

1. *The Social Security Act of 1935 Granted AFDC To All Children Under Age 16.*

The purpose of the Social Security Act of 1935 was to provide for the economic security of many of the nation's destitute citizens, and in particular to provide for the security of children. In agreement with the President's Committee on Economic Security, the Senate Report

declared, "The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures for the security of children." Sen. Rep. No. 628, 74th Cong., 1st Sess. 16 (1935). The House Report also agrees with the President's Committee on Economic Security stating, "The core of any social plan must be the child." H.R. Rep. No. 615, 74th Cong., 1st Sess. 10 (1935). Both reports recognized that state and local government could no longer do the job of providing assistance to dependent children. Both Reports and Administration's witnesses who appeared before the committees noted the glaring gap in the state's enactment and execution of Mothers' Pension Laws, the predecessors of AFDC, which varied throughout the country and the need for national uniform standards. H.R. Rep. No. 615, 74th Cong., 1st Sess.,

10-12 (1935).[25] Sen. Rep. No. 628, 74th Cong., 1st Sess., 17-19 (1935).[26]

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[25]The House Report indicated that all eligible children would receive aid:

> Dependent Children
>
> One clearly distinguishable group of children, now cared for through emergency relief, for whom better provision should be made, are those in families lacking a father's support. Nearly 10 per cent of all families on relief are without a potential breadwinner other than a mother whose time might best be devoted to the care of her young children. Last fall it was estimated that there were 350,000 families on relief, the head of which was a widowed, separated, or divorced mother and whose other members were children under 16. Above 700,000 children under 16 belong to such families, and, with the increase in relief lists since then, this number has probably increased proportionately.
>
> It has long been recognized in this country that the best provision that can be made for families of this description is public aid with respect to dependent children in their own homes. Forty-five States now have laws providing such aid, but in many of these States the laws are only partially operative or not at all so. With the financial exhaustion of State and local governments a situation has developed in which there are more than three times as many families eligible for such aid as are actually in receipt of it, and they are now being supported by emergency relief.
>
> For the welfare of the many young children involved, it is highly desirable that these families should be taken care of through public aid. This will not be possible, however, unless the Federal Government aids the States in carrying this burden. Such aid is proposed in Title IV of this bill, under which the Federal Government will assume one-third of the cost of aid to dependent children paid under State laws. This does not involve any larger expenditures than the Federal Government has been making for the support of these families on relief, but will very materially aid the States in caring for this group of their unemployables, for whom they must now assume responsibility. H.R. Rep. No. 615, 74th Cong., 1st Sess. 9-12 (1935).

[26]The Senate Report found "great need for special safeguards for many underprivileged children" and extension of aid to all eligible children was contemplated:

[continued]

It was the expectation of both committees that all children under the age of 16 in states which submitted a plan

Security for Children

The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures for the security of children. Unemployment compensation, for instance, will benefit many children in the homes of unemployed workers; and even old-age pensions and old-age benefits will in many cases indirectly aid children in families whose resources have been drained for the support of aged grandparents.

In addition, however, there is a great need for special safeguards for many underprivileged children. Children are in many respects the worst victims of the depression. The relief census of October, 1933 disclosed that 42 per cent of all persons on emergency relief were children under 16 years of age, although this age group constitutes only 31 per cent of the total population. If this percentage still holds good there are now above eight million children on emergency relief. As the House Ways and Means Committee well stated: "With so many children now growing up under the abnormal conditions involved in relief and the many hardships created through the depression, it is imperative that everything possible be done to offset the demoralizing and deteriorating effects of the great disaster that has befallen this country."

Many of the children included in relief families present no other problem than that of providing work for the breadwinner of the family. These children will be benefited through the work relief program and still more through the revival of private industry. But there are large numbers of children in relief families which will not be benefited through work programs or the revival of industry.

These are the children in families which have been deprived of a father's support and in which there is no other adult than one who is needed for the care of the children. These are principally families with female heads who are widowed, divorced, or deserted. A careful estimate based upon surveys in many different communities indicated that in the fall of 1934 there were above 350,000 families of this character on emergency relief rolls, with above 700,000 children under 16 years of age included among their members.

With no income coming in, and with young children for whom provision must be made for a number of years, families who are without a father's support require public assistance, unless they have been left with adequate means or are aided by friends and relatives. No less than 45 States

[continued]

were to be covered, and would include those children then being covered by federal emergency relief who were not

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have enacted laws to meet the particular needs of such families. These are the mothers' pension laws under which aid is given to the dependent children on a basis similar to old-age pensions. Through cash grants adjusted to the needs of the family it is possible to keep the young children with their mother in their own home, thus preventing the necessity of placing the children in institutions. This is recognized by everyone to be the least expensive and altogether the most desirable method for meeting the needs of these families that has yet been devised.

But while 45 States have made provisions for mothers' pensions, there are at this time more than three times as many eligible families on emergency relief as are in receipt of mother's pensions. In three of the 45 States with mothers' pensions laws no such pensions were paid in 1934. In many other States pensions were paid only in some counties; in fact, mothers' pensions are now being paid in less than one-half of all counties in States which have mothers' pension laws. Where pensions are allowed the grants are often inadequate, the average per month per family ranging from $7.29 in the lowest State to $60.14 in the highest....

There is great need for expansion in actual operation of the mothers' pension laws and in many States for the liberalization of the pensions. When the Federal Government turns back to the States the responsibility for the unemployables, the number of families for whom mothers' pensions should be provided will be more than doubled. Many States will be unable, without some assistance from the Federal Government, to assume this additional cost, with a net result of great suffering and damage to the children in these fatherless families. It is for this reason that title IV proposes to inaugurate a policy of Federal grants-in-aid to the States based upon their expenditures for mothers' pensions. These grants-in-aid are made under conditions very similar to the grants for old-age assistance. Instead of equal matching, however, the Federal Government under title IV will only pay one-third of the total cost, subject to the maximum limitations specified in Section 403(a). It is believed that this aid will prove sufficient to bring about a substantial extension of the mothers' pensions. This program does not represent an attempt to dictate to the States how they shall care for families of this character, but is recognition of the fact that many States need aid to carry out the policy which they have already adopted. Sen. Rep. No. 628, 74th Cong., 1st Sess., 16-19 (1935).

covered under existing state Mothers' Pension Laws. H.R. Rep. No. 615, 74th Cong., 1st Sess. 9-12 (1935). These reports reaffirmed the views of the Administration's spokesmen presented to the Committees.

A "dependent child" for purposes of the AFDC title was defined in § 406 of the original Act:

> DEFINITIONS.
>
> Sec. 406. When used in this title—
>
> (a) The term "dependent child" means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity or a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home; (b) The term "aid to dependent children" means money payments with respect to a dependent child or dependent children.

Section 406(b) spelled out that the "aid to the dependent children" which was to be furnished the dependent children defined in Section 406(a) was "money payments."

Those children in Section 406(a) whose claim for "money payments" under § 406(b) was denied, were provided a remedy by § 402(a)(4) which imposed on the states a duty to grant "to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for fair hearing before such state agency. . . ." These sections, in combination, make clear that there was no Congressional approval for a state plan which limited AFDC benefits to children less than 16 years old.[27]

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[27] This interpretation is not apposite to that of this Court in *King v. Smith*, 392 U.S. 309, 317, 333 (1968), which based the duty owed by the state on the combination of § 402(a)(10) (duty to furnish aid with reasonable promptness) and § 406(a). Section 402(a)(10) was added in 1950 to strengthen the fair hearing requirement and to deal

2. *The 1939 Social Security Act Amendments Required AFDC To Be Furnished To Children 16 to 18 If Regularly Attending School.*

The original congressional intent to provide minimum federal standards to insure the security of children was sustained and the protection increased by subsequent congressional developments.

On December 30, 1938, the Social Security Board submitted its report to the President of the United States regarding desirable amendments to the Social Security Act. In the AFDC section of the report the Board recommended that the age qualification for dependent children be raised from 16 to 18 for children regularly attending a school. This was a recognition of the desirability of encouraging children to finish high school as well as the need to keep them for longer periods outside an already cluttered labor market.[28]

The House Report viewed the amendment as part of a program to promote the security of the family and the home, which contemplated that states would be obliged to amend their laws to comply with the amendment:

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with the problem contemplated and prohibited by Congress but which was subsequently allowed through administrative interpretation—the use of waiting list to deny aid to otherwise eligible persons.

[28]Mr. Altmeyer, one of the members of the Social Security Board, testifying at the Senate Finance Committee Hearings on the 1939 amendments, stated the Board's position on this amendment as follows:

> The Board has also recommended that the age limit for dependent children should be raised in the Federal law from 16 to 18 years when the child is regularly attending school. This would recognize the present desirable tendency for children to finish high school before seeking permanent employment. This recommendation has been embodied in H.R. 6635.

Senate Committee on Finance, Social Security Act Amendments. Hearings on H.R. 6635, 76th Cong., 1st Sess. 33 (1939).

The bill makes two changes, effective January 1, 1940, designed to expand aid to dependent children. They are as follows:

* * * * *

The age limit for Federal grants is raised from 16 to 18 if the state agency finds that the child is regularly attending school. This will enable most children to finish high school. Six States already provide aid to children up to the age of 18 and six additional States have the necessary legislation to take advantage of this amendment immediately. It is estimated that about 100,000 additional children may obtain aid by virtue of this change, provided all States amend their laws accordingly. H.R. Rep. No. 728, 76th Cong., 1st Sess. 28-29 (1939).[29]

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[29]The House Report stated in relevant part:

> The committee has included in the bill several amendments designed to liberalize and clarify existing Federal provisions concerning public assistance and to simplify the administration of the State plans. No fundamental change in Federal-State relations is proposed . . .
>
> The bill makes two changes, effective January 1, 1940, designed to expand aid to dependent children. They are as follows:
>
> 1. The Federal matching is increased from one-third to one-half. This will enable the States to give aid to many additional needy children. There are at the present time about 165,000 children in 71,000 families who have filed applications in the States for aid and many more who will be eligible for aid when these additional funds become available.
>
> 2. The age limit for Federal grants is raised from 16 to 18 if the State agency finds that the child is regularly attending school. This will enable most children to finish high school. Six States already provide aid to children up to the age of 18 and six additional States have the necessary legislation to take advantage of this amendment immediately. It is estimated that about 100,000 additional children may obtain aid by virtue of this change, provided all States amend their laws accordingly.
>
> It is estimated that the present State programs, when amended in accordance with the provisions of this bill will enable the States to provide monthly benefits for at least

The Senate Report approved the amendments because "[O]ur obligation to provide care for the children of today who will be the parents of the next generation is one which must be met. The amendments recommended to both the insurance and the assistance titles are part of a common program to promote the security of the family and the home." Sen. Rep. No. 734, 76th Cong., 1st. Sess., 30 (1939).[30]

1,000,000 dependent children or over 300,000 more children than are being aided at the present time.

The additional cost to the Federal Government of these two amendments is difficult to estimate due to the fact that the amendments are effective only at such time and to the extent that the States match the Federal funds. The additional costs of these amendments for assistance to children is estimated at about $30,000,000 to $50,000,000 per year. Some of this cost will be offset in future years because of the widows' and orphans' benefits provided under the insurance plan. In any case, our obligation to provide care for the children of today who will be the parents of the next generation is one which must be met. The amendments recommended to both the insurance and the assistance titles are part of a common program to promote the security of the family and the home.

H.R. Rep. No. 728, 76th Cong., 1st Sess. 27-29 (1939).

[30]The Senate Report was substantially the same as the House Report.

The Senate did include one additional amendment to the expansion of eligibility by including non-remunerative apprentices in the same class as children regularly attending school. This was the result of questioning of Mr. Altmeyer, by Senator Gerry of Pennsylvania, during the Senate Finance Committee Hearings. Senator Gerry thought that the child learning a trade would be discriminated against. An amendment was introduced on the floor of the Senate to extend the definition of a dependent child to include those under 18 who were serving apprenticeship "without remuneration." 84 Congressional Record, 11088 (August 4, 1939). This amendment was deleted in conference. See Senate Committee on Finance, Social Security Act Amendments, Hearings on H.R. 6635, 76th Cong., 1st Sess. 19-20 (1939).

Both Reports stated, "No fundamental change in Federal-State relations are proposed." This statement when viewed with the other 1939 amendments indicates that the improvements in the ADC program, such as increasing the matching grant formula, imposing restrictions on disclosure, the requirement of merit standards for State administrative personnel, and the requirement that in determining need the states must consider any other income and resources of the individual claiming assistance, did not alter the basic spheres of federal-state authority set down by Congress in 1935. The states still retained the ability to determine need and to set the standard of adequacy and apply them to the facts of an applicant's case to determine eligibility.[31] The Federal Government still retained its power to determine who the classes of eligible individuals for measurement against state determined need and standard of assistance would be, including the prescription that 16 to 18 year old children regularly attending school would be eligible for AFDC benefits.

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[31] The term "needy" was not added until the 1939 amendments. The states' power to define the standard of need and set the level of benefits was implicit and accepted by the Social Security Board after the House Ways and Means Committee amended the Administration's bill, H.R. 4120, 74th Cong., 1st Sess., § 204 (1935), by deleting the requirement that states must furnish sufficient assistance which, when combined with available family income, would assure a "reasonable subsistence compatible with decency and health." The Senate Finance Committee caused a specific provision to be inserted in § 401 providing that federal funds were to enable each state to furnish assistance only "as far as practicable under the conditions in such states." The impetus behind removing the federal requirement of decency and health appears to have been based on states' rights considerations in maintaining segregation. Witte, *The Development of the Social Security Act* 144 (1962).

3. *The 1956 Social Security Act Amendments Removed The School Attendance Requirement For 16 to 18 Year Old AFDC Children.*

In 1956, among the Administration's proposed amendments were two changes to extend coverage to the Aid to Dependent Children Program. One of them eliminated the requirement that children between the ages of 16 and 18 be regularly attending school. Jay Roney, Director of the Bureau of Public Assistance, in presenting the Administration's proposals stated that the change to liberalize eligibility was "comparatively minor" but desirable because of the needs of the children involved.[32] The House did not report these two administration proposals. The Senate Finance Committee reported them as two amendments to H.R. 7225. The Senate Report stated:

> Two amendments have been made to the aid to dependent children title neither of which affects large numbers of children but both of which *make* some additional needy children eligible for aid. . . . The second [amendment] would eliminate the requirement that for a needy child between the ages of 16 and 18 to receive aid, he be in regular attendance at school. This would permit Federal sharing in assistance to such children unable to attend school because of illness or handicap, or because school facilities are not available. (Emphasis added) Sen. Rep. No. 2133, 84th Cong., 2nd Sess. 30 (1956).

The Conference Report referred to the two amendments as follows:

> These amendments also eliminate the requirement that a needy child between 16 and 18 years of age

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[32] House Committee on Ways and Means, Public Assistance Titles of the Social Security Act, Hearings on H.R. 9120, 9091, 10283, and 10384, 84th Cong., 2nd Sess., 22 (1956). See also Testimony of Charles I. Scholtland, Commissioner of Social Security, Department of Health, Education and Welfare, *Id.* at 34-40.

> must be regularly attending school in order *to be eligible for aid to dependent children.* The House recedes. Conf. Rep. No. 2936, 84th Cong., 2nd Sess. 42 (1956). (Emphasis added).

The Senate Report makes clear the intent to "make" additional needy children eligible for aid. It eliminated the requirement that children between the ages of 16 and 18 be in regular attendance at a school in order "*to receive aid.*" (Emphasis added.) The use of the term "permit Federal sharing" in the report is seized upon in the amicus brief of the government (p. 6) as justification for its view that the states could chose not to grant aid to 16 to 18 year old students in school. However, the government completely ignores the Conference Report. Such an inference asserted by the government is unsound and not supported by either the Senate or Conference Reports, the changed nature of the program[33] or the developed comprehensive federal scheme of

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[33]The changing nature of the Aid to Dependent Children Program also must be recognized. In the 1950 amendments, Congress required the states to furnish aid to eligible individuals with reasonable promptness, included the parent or near relative with whom the dependent child was living as an eligible individual for AFDC payments, and made provision for notification to law enforcement officials of aid being furnished to a child who had been deserted or abandoned by a parent. The *changed nature* of the program is also evidenced by the 1956 amendments which made explicit that the strengthening of family life was a major congressional concern.

No one would now contend that a state might refuse to furnish assistance to the mother of a dependent child on the grounds that it would make her more employable after Congress has declared her eligible, *see Woolfolk v. Brown,* 2 CCH Pov. L. Rep. ¶13, 170 (E.D. Va. Apr. 22, 1971) (Virginia's "work rule" conflicts with federal WIN Program); *Anderson v. Burson,* 300 F.Supp. 401, 404 (1968) (Georgia's employable mother rule invalid), or on the grounds of her immorality, *see King v. Smith,* 392 U.S. 309 (1968); *Doe v. Harder,* 310 F.Supp. 302 (D. Conn. 1970) *appeal dismissed* 399 U.S. 902 (1970) (contempt citation against Commissioner of Connecticut State Welfare Department purged by changing regulation which denied aid to mother of illegitimate children who

education, work training and employability for children considered *infra* at 80-82. The use of the term "permit Federal sharing" in the report is conclusory in nature, stating what is obvious, and not an indication of permissiveness towards the states. Federal sharing is not permitted under the Act unless the state complies with the terms and purposes of the Act. *King v. Smith*, 392 U.S. 309, 333 n. 34 (1968).

The Conference Report is even stronger evidence of Congress' intent to declare these children eligible. It indicates that Congress simply made these children eligible.

4. *The 1964 Social Security Act Amendments Extended AFDC Benefits To 18 To 21 Year Old High School, Vocational Or Technical School Students.*

The 1964 and 1965 amendments were part of a 1960's public assistance orientation, much different than in previous years, reflecting a significant change in a nation itself and its people. The public assistance crisis of the 1960's was in the family itself and its ability to prepare its younger members for life. In 1964 legislation was introduced in both the public assistance title and the OASDI title to provide benefits for children past the age of 18 who were continuing in school. The Senate amended the House Bill, H.R. 10473. This was necessary the Senate Report found because "the assumption that children are no longer dependent upon attaining age 18 is not valid as applied to children still attending school."

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would not cooperate with welfare department); *Evans v. Dept. of Social Services*, 22 Mich. App. 633, 178 N.W.2d 173 (1970) (Michigan's requirement that a mother's previous welfare fraud renders her dependent children ineligible for assistance.)

EXTENSION OF AGE LIMIT FOR DEPENDENT CHILDREN IN SCHOOL

The committee has added a provision which would extend Federal matching as to payments of aid to families with dependent children where a child has attained 18 but is still attending high school or a vocational school. The child must be in regular attendance in pursuance of a course of study leading to a high school diploma, or its equivalent, or in regular attendance in a course of vocational or technical training designed to fit him for gainful employment. Upon reaching age 21, or withdrawing from school, eligibility for Federal matching would cease. The extension of the program in this manner would be optional with the States.

The assumption that children are no longer dependent upon attaining age 18 is not valid as applied to children still attending school. Moreover, the present sharp cutoff at age 18 may have the effect of forcing just those children to leave school who are most in need of a high school education or vocational training if they are to become self-sufficient and stay off the welfare rolls.

The estimated cost of this amendment is $2 million for the first full year and $11 million after 5 years, assuming that half of the States are then participating. Sen. Rep. No. 1517, 88th Cong., 2nd Sess. 2 (1964).

The Senate amendment to the House Bill was concurred in on the floor of the House. The House considered the amendment corollary to H.R. 11865, which was to extend welfare benefits to students over 18 eligible under the OASDI system. The Senate Report on the OASDI (H.R. 11865) and the public assistance were essentially the same in reasoning and purpose. Children over 18 still attending school are still dependent. The OASDI report acknowledged in more detail the significant changes in national life and the need for Congressional action:

> With many employers requiring more than a high school education as a condition for employment, education beyond the high school level has become almost a *necessity* in preparing for work.
>
> The committee believes it is now appropriate and desirable to provide social security benefits for children who are full-time students between the ages of 18 and 22 and most of whom will have suffered a loss of parental support. Sen. Rep. No. 1513, 88th Cong., 2nd Sess. 9 (1964) (Emphasis added).

The OASDI provisions did not pass in 1964. The public assistance age provision did pass in 1964, and was amended again in 1965 to include college and university students thereby bringing it in line with the OASDI title, which passed in 1965.

For the first time in any of the committee reports on extending federal AFDC age eligibility, a report used the term optional in describing the extension of this program. The obvious conclusion to be drawn is that all the previous amendments were mandatory upon the states and that Congress specifically spelled out that this one would not be. However, the only option incorporated into the legislation was for the Secretary of HEW to set standards for the schools or courses that would qualify a child to receive AFDC benefits. To read the age amendment as optional would be counter to the reasoning and purpose of the reports and the previous legislative history. If it is read as optional, the 1965 amendment dispels that such a view is now compatible with the statute.

5. *The 1965 Social Security Act Amendments Extended AFDC Benefits To 18 To 21 Year Old Welfare Children Attending A College Or University.*

The 1965 amendments to § 406(a) closed the gap in AFDC children's school eligibility and established substantial equity as to eligibility for dependent children under both the OASDI and public assistance systems.

The Senate Finance Committee introduced an amendment to H.R. 6675 which granted AFDC to children who were in attendance at a college or university between the ages of 18 and 21. The purpose of the OASDI and AFDC provisions was the same, "[T]o assure, as far as possible, that children will not be prevented from going to school or college because they are deprived of parental support:

> AID TO FAMILIES WITH DEPENDENT CHILDREN IN SCHOOL
>
> Under existing law States, at their option, may continue payments to needy children up to age 21 in the aid to families with dependent children program, providing they are "regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment." The committee added an amendment extending this provision so as to include needy children under 21 who are regularly "attending a school, college, or university." Federal sharing for this purpose would thus be available to States who implement such a program for payments to children regularly attending a college, or university, as well as those attending high school or a vocational school, thus bringing this provision more nearly in line with the provision of the bill relating to the continuation of a child's benefits under the OASDI system. The objective of the provision in both programs is to assure, as far as possible, that children will not be

> prevented from going to school or college because they are deprived of parental support. Sen. Rep. No. 404, 89th Cong., 1st Sess. 147 (1965).

The Conference Committee stated the "amendment would broaden the type of schools that children over the age of 18 and under the age of 21 may attend and receive aid to families with dependent children payments in which the federal government will participate. The Conference Report also deleted the reference that the extension by the states was optional. It made clear that it was expanding the types of schools a child between 18 and 21 could attend and receive AFDC:

> Eligibility of children over 18 attending school.
>
> Amendment No. 511: This amendment would broaden the type of schools that children over the age of 18 and under the age of 21 may attend and receive aid to families with dependent children payments in which the Federal Government will participate. The extension would be from the requirement that the child be (as determined in accordance with standards prescribed by the Secretary of Health, Education and Welfare) a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent, to the requirement that he be (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college or university. The House bill contained no provision on this subject. The House recedes. Conf. Rep. No. 682, 89th Cong., 1st Sess. 69-70 (1965).

Even if the lower court were correct in its view that the extension of aid past age 18 is optional [A. 87-91] for Illinois, it still erred in allowing the defendants to exclude welfare children attending a college or university. If a state extends past 18, it must extend to all the types of schools defined in § 406(a). If the theory of the Social Security Act accepted by the court below is sustained, Illinois might, for instance, grant benefits past 18 in the following situa-

tions: (1) a university student, but not a high school student, (2) a technical school student, but not a vocational school student, (3) a vocational school student but not a high school student, (4) a college or university student but not a technical school student.

There is no authority, either in reason or the Act and its legislative history to sustain such results. The Senate Report stated "The Committee added an amendment *extending this provision* [the 1964 amendment] so as to include needy children under 21 who are regularly 'attending a school, college or university.'" Sen. Rep. No. 404, 89th Cong., 1st Sess., 147 (1965) (emphasis added). If the 1964-1965 amendments are to be viewed as optional, they are optional taken together, and Illinois must repair its scheme to accord with a proper exercise of that option.

It is apparent upon examining the legislative history of the Act that Congress has viewed the education and employment of dependent youth and adult as a national problem which must be dealt with on a national basis. Illinois is in accord with this position. People move from state to state freely. From the inception of this country people have moved from place to place in search of a better life. We are a people used to moving. Recent migrations of our population underscore this tradition. However, recent migrations have brought people with widespread illiteracy and unsophisticated rural skills to complex and technical urban settings. Many of them are now dependent upon welfare for a meager subsistence. While Congress has decided that only a national uniform policy can solve these difficult problems, both Congress and this Court have been sensitive to the needs of the states because of taxing limitations with which they must contend. Therefore states have been given the power to determine the standard of need and level of benefits for themselves, and have been allowed to use maximum grants within even this fiscal structure. What the states have not been given the power to do is to determine the classes of eligible recipients. A state may allocate

differently among those made eligible by Congress, but it may not totally exclude persons made eligible by Congress. What Illinois has done to Omega Minor and other children similarly situated is prohibited. *Rosado v. Wyman,* 397 U.S. 397 (1970); *Dandridge v. Williams,* 397 U.S. 471 (1970).

D. Proper Judicial Construction Of The Social Security Act Mandates That AFDC Be Furnished To Needy, Dependent College Students.

Both Congress and this Court have found that the overriding purpose of the Social Security Act is to provide for the security of dependent children. Any construction of the AFDC title must begin with the premise that it has the special mandate to protect dependent children who are needy.

Interpretation of the term "dependent child" in Section 406(a) as urged by intervening-appellants is strongly supported by the way the term is used in other Sections of the Act and in relation to a child's education and employability. Section 402(a)(8)(A) requires that effective July 1, 1969, a state *must disregard:*

> (i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment. . . .[34]

The purpose of this provision is clearly to provide an incentive for dependent children to continue in school.

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[34] See, H.R. Report 544, 90th Cong., 1st Sess., 16-17, 106-107 (1967); Sen. Rep. No. 744, 90th Cong., 1st Sess., 27-28, 157-159 (1967); Conf. Rep. No. 1030, 90th Cong., 1st Sess. (1967).

The dependent child whose earned income is exempt under § 402(a)(8)(A)(i) because he is a student is surely the same dependent child referred to in § 406(a). *King v. Smith*, 392 U.S. 309, 330 (1968). And Congress obviously did not intend that the dependent child whose earned income is exempted by the operation of this provision of § 402(a), which even the United States and the court below conceded is mandatory on Illinois, would receive no AFDC benefits in the first place or in fact decrease the amount of assistance the child's family receives because the child is not eligible. If the income is not disregarded it will be budgeted by defendants to meet what they believe to be the child's share of the rent and household expenses (IDPA-CAM, § 1252.2) and that amount will be deducted from the family's grant.

If this Court upholds the decision of the lower court and adopts Illinois' provision which grants aid and the income exemption to vocational school students and denies aid and the exemption to college and university students, it will unravel the legislative intent to encourage students to pursue their education. It would act as a disincentive to work for these children.

The federal scheme for the education, work training and employment of needy dependent children is further emphasized by the use of the term "dependent children" in §§ 402 (a)(15) and (19) in combination with § 430, *et seq.* These sections of the AFDC title were added by the 1968 amendments and are commonly known as the Work Incentive Program (WIN). The Congressional purpose, apparent on the face of the statute, was to provide "for the development of a program for each appropriate relative and dependent child . . . with the objective of assuring to the maximum extent possible, that such relative child and individual will enter the labor force and accept employment so that they will become self-sufficient and . . . otherwise strengthening family life." Section 402(a)(15). Children over the age of sixteen were to be referred to the Secretary of Labor or his representative for participation in the Work Incentive Pro-

gram. *The states were appropriately prevented from referring a child over the age of sixteen who was attending school full-time. Section 402(a)(19)(A).* (These portions of the Act are set out in Appendix A.)

These extensive amendments of the Act leave no doubt that Congress has enacted a comprehensive program for the education, work training and employability of dependent children. The pattern of this legislative scheme is clear. Children over the age of sixteen who are not regularly attending school are to be referred to a Work Incentive Program for further training or employment. Children attending school full-time are exempted from the WIN Program and are specifically encouraged by the student income exclusion to obtain as much education as they can. The underlying policy considerations and consistency in statutory interpretation require that the "dependent child" referred to in these statutory provisions is the same "dependent child" as that in Section 406(a). Such a federal scheme can only be secured where the state is under the duty to provide assistance to all those children made eligible by Congress. Illinois is frustrating and retarding declared Congressional policy by its refusal to grant AFDC benefits to otherwise eligible college and university students. Illinois has no real justification for its policy of exclusion and the interest that it advances, fiscal savings, can be dealt with in other, more appropriate, manners. *King v. Smith,* 392 U.S. 309, 333-334 (1968).

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CONCLUSION

For the reasons stated above, the judgment of the district court below should be reversed and the cause remanded to the district court with instructions, as there is no factual matter in dispute, to enter summary judgment for the intervening–plaintiff appellants and other appropriate relief as prayed for in intervening plaintiffs complaint.

Respectfully submitted,

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June 1971

APPENDIX A

[42 U.S.C. (Supp. IV 1968)]

§ 601. Appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary

(a) A State plan for aid and services to needy families with children must * * * (8) provide that, in making the determination under clause (7), the State agency–

(A) shall with respect to any month disregard–

(i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment, and

(ii) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child)

whose needs are taken into account in making such determination, the first $30 of the total of such earned income for such month plus one-third of the remainder of such income for such month (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 632(b)(2) and (3) of this title); and

(B) (i) may, subject to the limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (ii) may, before disregarding the amounts referred to in subparagraph (A) and clause (i) of this subparagraph, disregard not more than $5 per month of any income;

except that, with respect to any month, the State agency shall not disregard any earned income (other than income referred to in subparagraph (B)) of—

(C) any one of the persons specified in clause (ii) of subparagraph (A) if such person—

(i) terminated his employment or reduced his earned income without good cause within such period (of not less than 30 days) preceding such month as may be prescribed by the Secretary; or

(ii) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment; or

(D) any of such persons specified in clause (ii) of subparagraph (A) if with respect to such month the income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency pursuant to clause

(7) (without regard to clause (8)), unless, for any one of the four months preceding such month, the needs of such persons were met by the furnishing of aid under the plan;

* * * * *

(10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals;

* * * * *

(14) provide for the development and application of a program for such family services, as defined in section 606 (d) of this title, and child-welfare services, as defined in section 625 of this title, for each child and relative who receives aid to families with dependent children, and each appropriate individual (living in the same home as a relative and child receiving such aid whose needs are taken into account in making the determination under clause (7)), as may be necessary in the light of the particular home conditions and other needs of such child, relative, and individual, in order to assist such child, relative, and individual to attain or retain capability for self-support and care and in order to maintain and strengthen family life and to foster child development;

(15) provide—

(A) for the development of a program for each appropriate relative and dependent child receiving aid under the plan, and each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under clause (7), with the objective of—

(i) assuring, to the maximum extent possible, that such relative, child, and individual will enter the labor force and accept employment so that they will become self-sufficient, and

(ii) preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life,

(B) for the implementation of such programs by–

(i) assuring that such relative, child, or individual who is referred to the Secretary of Labor pursuant to clause (19) is furnished child-care services and that in all appropriate cases family planning services are offered them, and

(ii) in appropriate cases, providing aid to families with dependent children in the form of payments of the types described in section 606(b)(2) of this title, and

(C) that the acceptance by such child, relative, or individual of family planning services provided under the plan shall be voluntary on the part of such child, relative, or individual and shall not be a prerequisite to eligibility for or the receipt of any other service or aid under the plan,

(D) for such review of each such program as may be necessary (as frequently as may be necessary, but at least once a year) to insure that it is being effectively implemented,

(E) for furnishing the Secretary with such reports as he may specify showing the results of such programs, and

(F) to the extent that such programs under this clause or clause (14) are developed and implemented by services furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;

* * * * *

(19) provide–

(A) for the prompt referral of the Secretary of Labor or his representative for participation under a work incentive program established by part C of–

(i) each appropriate child and relative who has attained age sixteen and is receiving aid to families with dependent children,

(ii) each appropriate individual (living in the same home as a relative and child receiving such aid) who has attained such age and whose needs are taken into account in making the determination under section 602(a) (7) of this title, and

(iii) any other person claiming aid under the plan (not included in clauses (i) and (ii)), who, after being informed of the work incentive programs established by part C, requests such referral unless the State agency determines that participation in any of such programs would be inimical to the welfare of such person or the family;

except that the State agency shall not so refer a child, relative, or individual under clauses (i) and (ii) if such child, relative, or individual is—

(iv) a person with illness, incapacity, or advanced age,

(v) so remote from any of the projects under the work incentive programs established by part C that he cannot effectively participate under any of such programs,

(vi) a child attending school full time, or

(vii) a person whose presence in the home on a substantially continuous basis is required because of the illness or incapacity of another member of the household;

(B) that aid under the plan will not be denied by reason of such referral or by reason of an individual's participation on a project under the program established by section 632(b)(2) or (3) of this title;

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C by appropriate agencies of the State or private organizations of 20 per centum of the cost of such programs, as specified in section 635(b) of this title;

(D) that (i) training incentives authorized under section 634 of this title, and income derived from a special work project under the program established by section 632(b)(3) of this title shall be disregarded in determining the needs of an individual under section 602(a)(7) of this title, and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 632(b) (2) or (3) of this title shall be taken into account;

(E) that, with respect to any individual referred pursuant to subparagraph (A) who is participating in a special work project under the program established by section 632(b)(3) of this title, (i) the State agency, after proper notification by the Secretary of Labor, will pay to such Secretary (at such times and in such manner as the Secretary of Health, Education, and Welfare prescribes) the money payments such State would otherwise make to or on behalf of such individual (including such money payments with respect to such individual's family), or 80 per centum of such individual's earnings under such program, whichever is lesser and (ii) the State agency will supplement any earnings received by such individual by payments to such individual (which payments shall be considered aid under the plan) to the extent that such payments when added to the individual's earnings from his participation in such special work project will be equal to the amount of the aid that would have been payable by the State agency with respect to such individual's family had he not participated in such special work project, plus 20 per centum of such individual's earnings from such special work project; and

(F) that if and for so long as any child, relative, or individual (referred to the Secretary of Labor pursuant to subparagraph (A) (i) and (ii) and section 607(b)(2) of this title) has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under

a work incentive program established by part C with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment—

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under clause (7), and aid for any dependent child in the family in the form of payments of the type described in section 606(b)(2) of this title (which in such a case shall be without regard to clauses (A) through (E) thereof) or section 608 of this title will be made;

(ii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iii) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under clause (7)) if that child makes such refusal; and

(iv) if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under clause (7);

except that the State agency shall, for a period of sixty days, make payments of the type described in section 606(b)(2) of this title (without regard to clauses (A) through (E) thereof) on behalf of the relative specified in clause (i), or continue aid in the case of a child specified in clause (ii) or (iii), or take the individual's needs into account in the case of an individual specified in clause (iv), but only if during such period such child, relative, or individual accepts counseling or other services (which the State agency shall make available to such child, relative, or individual) aimed at persuading such relative, child, or

individual, as the case may be, to participate in such program in accordance with the determination of the Secretary of Labor;

* * * * *

§ 606. Definitions

When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

* * * * *

APPENDIX B

Handbook of Public Assistance Administration
"Green Sheets"
(Supplemental Pages for the Handbook)

Part IV	Eligibility, Assistance, and Services	
3200-3299	Age	10/11/65

G-3200. *Age*

G-3210. *Provisions of the Act*

Aid to Families With Dependent Children—Section 406 of the Social Security Act states as follows: "When used in this title—(a) The term 'dependent child' means a needy child . . . (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

G-3220. *Interpretation*

The objective of the optional extension of the AFDC age limit to age twenty-one is to make it possible for States to claim Federal financial participation in the cost of assistance given in behalf of individuals under that age, while enabling them to take advantage of educational opportunities to improve their preparation for self-support.

At age 18, some young people may not yet be in high school and some age 18 to 21 are attending high school or institutions of higher learning, but may not have graduated. ssistance may be the factor in enabling them to continue n school. Others may be helped to return to school or take advantage of vocational or technical training, if financial assistance in their behalf is available, and thus become better prepared to enter the labor market. These provisions include not only the youth living with relatives, but also those receiving assistance under AFDC foster care.

A student must be in regular attendance in a school, including elementary grades, high school, college or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment. Those who are attending school, or taking a course of vocational or technical training, on a part-time basis are considered to be in regular attendance.

A high school diploma is frequently a requirement for many jobs; and frequently, some college training, or even a degree, is necessary. Therefore, it is important to allow a young person the opportunity to at least complete high school, or to undertake advanced study, if he wishes to do so, rather than take specific vocational or technical training.

As is customary with families not receiving public assistance, the decision as to the course of study or training to be taken should be left to the youth and his parents. This does not preclude the recommendations of educational authorities as to the program best suited to the youth's capacities. Within the age limit set by the State, there should be a choice of attending a school, college, or university or taking a course of vocational or technical training for gainful employment.

For purposes of the Act, a course of vocational or technical training is an organized curriculum in a school or training unit or an organized training program under recognized sponsorship with a specified employment objective.

In addition to training courses offered by schools, institutes, or other training programs (e.g. apprenticeships or training arrangements, sponsored by business or industrial firms), youths served by the AFDC program might be eligible for admission to training courses established within programs under the Economic Opportunity Act (title I, Part A, and title V), the Manpower Development and Training Act, the AFDC Unemployed Parent Program (see IV-3424) and the Community Work and Training Program (see IV-3460) under title IV of the Social Security Act, and the Vocational Edu-

cation Acts, Thus, vocational education courses provided pursuant to co-operative arrangements between the State public asssistance agency and the State agency responsible for vocational education, under the authority of title IV of the Social Security Act, may offer training opportunities for youths receiving AFDC.

To achieve the objective of this legislation for increasing a young person's employability, he must have sufficient time, both in or outside the classroom or training center, to do the work required to complete the course. Therefore, a youth attending school or engaged in a training program should not be required to accept employment, in addition to his educational program, to remain eligible for AFDC.

Consideration of payments made under title I or II of the Economic Opportunity Act or programs assisted under such title must conform to legal prohibitions of the Act limiting the amount of such income which can be used in determination of need under public assistance programs. (See IV-3180)

G-3240. *Federal Financial Participation*

Federal financial participation may be claimed for money or foster care payments made, or for vendor payments made for medical services received, on or after July 30, 1965, with respect to children otherwise eligible for AFDC who:

> Have attained age 18 and are under age 21 provided they are regularly attending:
>
> (1) A school, college, or university or
>
> (2) A course of vocational or technical training designed to fit them for gainful employment.

If payments are made under the conditions above, Federal financial participation may be claimed in payments made for months in which the child is not in school because of official school vacation, illness, convalescence, or family emergency, and for the month in which the child becomes

21 or in which he completes or discontinues his school or training attendance.

3400-3499 10/23/46

Factors Applicable to Aid to Dependent Children

3400.

Several factors combine to make up the definition of "dependent child" as used in title IV of the Social Security Act. These eligibility provisions have been interpreted individually, but each interpretation is related to a definite concept of the objectives of aid to dependent children. The interpretations are intended to define and clarify the area of operation in which the Federal Government can participate financially under the act. This has been done (1) to free States from some of the uncertainties that have been partly responsible for restrictions limiting coverage, and (2) to support States in improved practice that accomplishes the objectives of the program.

The specific eligibility factors in aid to dependent children are interpreted in the light of two program objectives: (1) indication of the scope of coverage in Federal-State aid to dependent children programs consistent with the provisions of the Social Security Act; (2) the provision and continuity of service. The interpretations recognize that during periods of special stress or difficulty for children, continuity of service may be of particular importance. Federal participation in the program may be continued for temporary periods while necessary adjustments and readjustments are being worked out in specified situations.

These interpretations, while making possible an increased scope for the development of State policy and practice within the legal framework of the Federal act, are not intended to limit the States in providing programs that extend beyond the bounds of Federal financial participation.

3401. *Purpose of Aid to Dependent Children*

Aid to dependent children is an essential part of a broad social plan of public services, including education, health,

welfare; and the social insurances, that the Nation is progressively developing to assure its children opportunity to:

1. Grow up in a setting of their own family relationships;
2. Have the economic support and services they need for health and development;
3. Receive an education that will help them to realize their capacities; and
4. Share in the life of neighborhood and community.

To live in the family to which he belongs is the foundation of a child's security. The public has an interest and an obligation in sustaining the contribution which parents and immediate family make to the development of a child. Financial inability to meet a child's needs, therefore, should not be allowed to force a parent to surrender responsibility for bringing up the child.

The assumption underlying the aid to dependent children program is that when a family circle is broken or incomplete, or parents are handicapped by physical or mental disability, the measure most conducive to the child's welfare is the strengthening of the home against the financial impact of these lacks or losses and to give his parent, or other relative, a chance to gain or reestablish control over his affairs.

Recognizing the fundamental need of the child for security through receiving care, guidance, and affection from his own family the aid to dependent children program is directed toward enabling the parent, or in his absence a close relative, to ensure continuity in family relationships and to maintain full responsibility for a way of living in which the child naturally belongs. In addition, the program includes in its purpose, providing service, or access to other resources in the community, through which the family may realize their plans and hopes for their children and may improve their circumstances according to their necessity and desire. Thus the purpose of aid to dependent children is two-fold: (1) to make it possible for the child to remain in or return to the custody and care of his parents or of rela-

tives who have a natural bond of affection and concern for his well-being; and (2) to enable the child's unmet need to be supplied.

This purpose of the program must be understood and accepted by administrative officials and made known to applicants, if parents are to be in a position to make decisions with full knowledge of what the program has to offer them. Through contributing to or supplying the family's economic support, aid to dependent children should, for example, make it possible for a mother to choose between staying at home to care for her children and taking a job away from home. She has little or no choice, however, unless the aid available to her is enough to meet the family's maintenance needs and unless that aid is regular and continuous so that she can rely upon it.

Adequate care of the health of both parents and children is an essential factor in attaining the objectives of the program.

Since illness precipitates or aggravates financial and other difficulties, an opportunity to obtain needed medical care may enable a family to regain economic independence. Care of a disabled parent at home may avert separation of members of the family. The program, therefore, must take cognizance of the health factors necessary to preserve the child's home. These factors include both preventive and curative medical services for the child and the parent. Opportunity to obtain medical care and needed supplementary nursing, housekeeping or other services may be made available through the money payment and through agency services directed toward helping the family to use community resources.

The purpose of aid to dependent children is served in providing opportunity for children to develop individual capacity, with some measure of security against future economic hazards. To enable children receiving aid to dependent children to share in the opportunities in their community for education and for physical and social development

requires provision for their special individual requirements as well as for basic maintenance needs within the limits of the resources available. The development of individual capacity is important not only for the individual in achieving a useful and satisfying experience for himself, but it is significant as well for enriching the life of the community. The program is one means of fulfilling a fundamental purpose of all measures for social security—to foster and preserve basic human resources and family life.

4000-4999 11/30/62

Social Services in Public Assistance

4200. *Interpretation*

4210. *Purpose of Legislation*

The preamble to the Social Security Act as originally enacted contains the following:

> "To provide for the general welfare . . . by enabling the several States to make more adequate provision for aged persons, 'blind persons,' and dependent children. . . ."

The 1956 amendments contain the following declaration of purpose:

> "It is the purpose of this title . . . to promote the well-being of the nation by encouraging the States to place greater emphasis on helping to strengthen family life and helping needy families and individuals attain the maximum economic and personal independence of which they are capable."

In 1962 the Social Security Act was further amended for the purpose of "improvement in services to prevent or reduce dependency," thus implementing the national concern about the nature and extent of social problems of people served by the public assistance programs, and the national responsibility for provision and improvement of service to them. These amendments authorized the Secretary to "prescribe" and "specify" services found necessary "for the proper and

efficient administration of the State plan . . . ," and increased the Federal share in the cost of providing the "prescribed" and "specified" services from 50 to 75 percent.

The broad purposes of the legislation are to:

1. Clarify and emphasize the national interest and responsibility in the further development of services with emphasis on strengthening family life, social rehabilitation, prevention of dependency, self-support, and self-care.

2. Encourage and enable State agencies to develop and expend social services in their programs, recognizing that primary responsibility rests with the State agencies to determine the purposes and scope of their assistance programs within the framework thus set forth in the Federal Act.

3. Provide increased Federal financial participation to assure, at least, services in respect to problems and conditions of families, children, and adults that handicap their family life, or prevent the attainment of self-support and self-care.

4. Establish a basis for cooperative working relationships between the public assistance programs and other programs within public welfare agencies and other related agencies in the community, in providing services to individuals and families currently or formerly receiving assistance, and to prevent dependency on the part of other persons.

5. Strengthen the framework for Federal-State responsibilities in developing and providing such services.

4220. *Social Purposes of Public Assistance Program*

4221. *Title IV*

The restatement of the purpose of Aid and Services to Needy Families with Dependent Children reads:

"For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial

assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. . . ."

4222. *Titles I, X, XIV and XVI*

Each of these titles has the purpose "of enabling each State, as far as practicable under conditions in such State, to furnish rehabilitation and other services to help individuals . . . attain or retain capability for self-care."

Titles X, XIV, and XVI, specify the further purpose as "to furnish rehabilitation and other services . . . for self-support. . . ."

While self-support is not a specific purpose of service to the aged, it is not precluded when appropriate for the individual. Rehabilitation—personal, social and economic—is, therefore, a basic objective in all the four categories to the extent it is practicable for the individual.

4223. *Definition of Social Purposes*

A primary purpose of the 1956 and 1962 amendments is to stimulate and extend constructive services in the public assistance program that are designed to help families and individuals use their capacities to maintain or attain self-sufficiency and to function as useful, productive individuals as fully as possible. The objectives of service are defined as:

4223.1 *Strengthening Family Life*

Strengthening family life means sustaining and increasing the ability of parents to carry their parental responsibilities in the care, protection, and support of their children; and to sustain and increase the capacities of children to carry their appropriate role in total family life, to the end that children may have a home life conducive to healthy physi-

cal, emotional, and social growth and development. Families have the right and the responsibility to provide for adequate health care, education, and vocational training in accordance with the capacities of their children; and to provide for their participation in community life.

Parents have the right to make decisions affecting them and the welfare of their children. Similarly children have the right to look to their parents for such decisions. These rights and responsibilities are not abridged lightly, and only by the courts when circumstances and conditions pose serious threats to the welfare of the children or reveal serious failure of the parents to provide adequate care and guidance for them. Strengthening family life relates to the family as a unit and to the role that each member plays within the family. The role that parents play and their personal needs and interests are basic considerations in services to strengthen family life.

4223.2 *Self-Support*

Self-support means the economic capacity to provide partially or fully an adequate standard of living for oneself and for dependent members of the family. The aim of services directed toward the self-support objective is to assist the individual to maintain or develop his skills and capacities and to use them for stable employment that is financially and personally rewarding. Under title IV, the legislation makes clear that the objective of self-support must be "consistent with the maintenance of continuing parental care and protection." While self-support is not a major program emphasis for the aged or children, services are included to older people who desire such help or to young persons to assist them to prepare for future employment.

4223.3 *Self-Care*

Self-care means the personal ability to meet any or all of the normal demands of everyday life without continuing help from others. The aim of services directed toward self-care is to assist the individual to use his full capacities for his own care, and to maintain participation in family life and relationships within the community.

APPENDIX C

Ill. Rev. Stat. ch. 23 (1967);

§ 4-1.1. *Child Age Eligibility.* The child or children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school. "Regular Attendance", as used in this Section means attendance full time during the regular terms of such schools, or attendance part time during such regular terms as may be authorized by rule of the Illinois Department for the purpose of permitting the child to engage in employment which supplements his classroom instruction or which otherwise enhances his development toward a self-supporting status.

APPENDIX D

Ill. Dept. of Public Aid Categorical Assistance Manual:

§ 150. *Age Requirements:*

A.D.C. Dependent children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational or technical training school. (This does not include 18 through 20 year old children in college.)

1017 *Allowances For Education*

1017.2 *Education Beyond High School—Children Under Age 21*

A plan for education or vocational training in an accredited vocational or technical school or special training project is approved for the child under age 21 when:

Suitable employment depends on a short training program; or

A vocational or technical program of more than 1 year is approved by the regional office (Director of Field Operations, Cook County).

Special consideration is given to the child's desire for further training provided that his ability, aptitudes and school performance warrants such a vocational plan. Approval of a practical advisable plan is based on evaluation including but not limited to the following factors:

Present employability;

The time required for the training plan in relation to present employability;

Capacity to make productive use of added training;

The labor market in his field of interest;

Resources available for meeting part of the expense through scholarships, part-time employment, or family contributions;

The itemized amount of expense involved.

The assistance standard is used in budgeting the cost of shelter and items in the personal allowance for a recipient studying under an approved educational plan. Additional expenses required by the plan are allowed for:

Transportation. As needed and at the most reasonable cost. (Code 238 SC EX)

Lunches. An additional 15 cents per school day to supplement lunch taken from home; 45 cents per school day if lunch must be purchased. (Code 238 SC EX)

Other Expenses. Those required by the school including but not limited to tuition, fees, books and other school supplies. These allowances are issued by Form FA-13, Invoice Voucher, or by emergency check if it is necessary for the recipient to pay for the item. (Code 238 SC EX)

Additional Allowance. An additional allowance per month is budgeted to enable the individual to participate in school activities:

Under age 18 . . . . . $ 6.00
Age 18 and over . . . . 15.00 (Code 260 VOC TR)

On unusual items or expenses which exceed the assistance standard, the county department or regional office consults the Standards of Assistance Section (Home Economics Consultant in Cook County).